

1 May 2010

**Alliance Healthcare (Distribution) Limited, Cordia Healthcare Limited, OTC Direct Limited**  
**("we", "us", "the Companies")**

**TERMS AND CONDITIONS OF SALE**

These terms and conditions shall apply to all sales by the Companies which for the purposes of these terms shall mean Alliance Healthcare (Distribution) Limited, Cordia Healthcare Limited and OTC Direct Limited and shall prevail and supercede over your terms and conditions (if any), whether printed on any invoice, order, quotation, specification or any other document provided by you. These are the only terms and conditions upon which Alliance Healthcare (Distribution) Limited, Cordia Healthcare Limited and OTC Direct Limited are willing to supply products to you.

**1. The conditions**

- a. These conditions (as may be updated from time to time upon notice to you) apply to all orders for products placed by our customers ('you', 'your') to the exclusion of all other terms and conditions (including any of your terms and conditions under any purchase order, confirmation of order or any other document). These terms shall supersede any specific product terms that might apply to your order and in the event of any inconsistency with any other terms that might apply, these terms shall prevail.
- b. These conditions replace any other earlier conditions and may be changed by us in writing at any time, including by putting amended conditions on our website.
- c. When we accept orders placed by your employees, agents or contractors we will not be responsible for vetting the authorisation of those employees, agents or contractors and we will not be liable to you for any financial losses incurred by you by virtue of our accepting any order.

**2. Orders**

- a. We do not accept orders unless and until we confirm them or (if earlier) when we deliver the products to you.
- b. Each order for any one product which we accept creates a separate contract.
- c. We will accept orders depending on availability. We can refuse to accept orders for any reason.
- d. When placing an order you are responsible for accurately identifying the products you need.
- e. All descriptions, illustrations and specifications contained in our catalogues, brochures and websites are for illustration only and do not form any part of these conditions.
- f. If you cancel any order, you will indemnify us (which means you guarantee to cover us), in full, against any loss (including loss of profit), costs, damages, charges and expenses we suffer as a result.

**3. Delivery**

- a. Unless we say otherwise, the price quoted includes delivering the products to the agreed delivery address which must comply with any regulatory and registration requirements in full. However, we may make an extra charge to cover any extra related costs incurred and any increase in transport costs that apply before the date we deliver the products and we will notify you of any change in costs before delivery. You will provide at the delivery address adequate and appropriate equipment and support to enable you to take delivery of the products.
- b. Any dates quoted for delivering the products are only approximate. We will not be liable for any delay in delivering the products, however it is caused.
- c. If we cannot deliver an order in full, we will either send you a credit note for the shortfall or

send you an invoice for the actual quantity delivered and deliver the rest of the order at a later date which we will arrange with you.

- d. If we are delivering the products in instalments, each delivery will form a separate contract and failure to deliver any one or more of the instalments in line with these conditions will not render the whole order as terminated.
- e. The signature on a delivery note or drop sheet by any person working at the delivery address will be evidence that you have accepted delivery of the products in full.
- f. If you fail to take delivery of the products or fail to give us adequate delivery instructions at the time given for delivery (unless we are at fault or there are circumstances beyond your reasonable control), without affecting any of our rights and any action we may be entitled to take, we may:
  - (i) store the products until we actually deliver them and charge you for the reasonable costs (including insurance) of storage and any costs related to redelivery; or
  - (ii) sell the products at the best price we can get and (after deducting all related costs, including without limitation all reasonable storage, insurance and selling expenses) pay you any excess we make over the contract price or charge you for any shortfall below the contract price.
- g. At any time, we can stop making deliveries and demand payment for any products we have already supplied to you, no matter what previous agreement or arrangements have been made.
- h. If delivery is outside the UK, unless otherwise agreed in writing delivery shall occur ex works, from our premises (Inco terms 2000) and you shall arrange, pay for and be responsible for carriage.

#### **4. Price**

- a. The price of the products will be the price in our price file at the time of acceptance of the order, except where your order is for products ordered under a promotion or special offer and the price then will be as stated in that promotion or offer.
- b. The price does not include any value added tax ("VAT"), government tax or duty which will be charged and payable in addition to the price at the time when payment for the products is due.
- c. The price list is subject to change at any time without notice to you.
- d. We can charge the costs of pallets and returnable containers to you if you return these to us damaged or do not return them within 10 days of delivering the products.
- e. We will be entitled to charge, and you will pay, any account surcharge (by address) from time to time.

#### **5. Payment**

- a. We will invoice you for the price of the products, any other amount due to us, and any applicable VAT, tax or duty on or at any time after delivery, unless you fail to take delivery of the products. If this happens, we will be entitled to invoice you at any time after we have tried to deliver the products. If you have any queries, you must contact the Customer Services Department of the Company making the delivery (as shown on the companies statement) within three working days of the invoice date.
- b. Provided no other invoice or amount owing to us is overdue, or no other event has occurred to cause us to review your credit terms, you may be entitled to a settlement discount for paying on time. This will be shown on your monthly statement. Any queries relating to the settlement discount should be directed in writing to the Customer Finance Department of the Company responsible for your order (as shown on the statement) before the 15th day of the month in which we sent the statement to you.
- c. We are entitled not to give you any credit terms, but any credit terms given to you are subject to review by us from time to time and we can at any time and without prior notice suspend or vary any credit terms given to you. To facilitate this review you agree to provide us with your up-to-date financial information and statements of NHS income on request.
- d. Subject to the following sentence, you must pay the price of the products (less any discount you may be entitled to, but without any other deduction), and any other amount

due to us, before the last working day of the month following the month of the invoice date or by any other earlier date as we may notify to you from time to time. We shall be entitled at any time to require you to pay for any product before we supply it to you. We will be entitled to recover the price, even if we did not deliver the products, or ownership of the products, to you. It is a material term of this contract that you pay for the products on time. You must send your payment to the Customer Finance Department of the Company responsible for your order (as shown on the Companies invoices and statements). None of our drivers or agents can accept payment unless we have given you permission in writing beforehand. Any variation to these terms of payment must be agreed in writing by the relevant Companies Customer Finance Department. Due to the costs of processing a payment, we are entitled to withhold the payment of any rebate under £10 that is owed to you until at least £10 is owed to you.

- e. In the event that any payment is outstanding from you, we may (without affecting our other rights and any action we may be entitled to take) seize, recover and resell any products and you agree to give us the right to enter your premises, land or buildings to recover these products if you:
- (i) agree to sell or otherwise dispose of your business or any part of it;
  - (ii) agree to sell or otherwise dispose of all or any part of the products to someone else (other than in the usual course of your business);
  - (iii) breach these conditions or fail to pay any amounts due under these conditions (or any other agreement between you and us, or any of our subsidiaries, associates or holding companies) within three days of them becoming due (whether we demand it or not);
  - (iv) have a Receiver, Administrative Receiver, Administrator, Provisional Liquidator or Liquidator appointed, pass a resolution for winding-up, have a court order made against you, are judged insolvent or bankrupt, cannot pay your debts as they fall due or make any arrangements with your creditors;
  - (v) encumber or in any way charge any of the products;
  - (vi) cease to trade; or
  - (vii) are late in making any payment to us

and we will be entitled to demand payment of all outstanding invoices, whether they are due or not, and you must return any products we have delivered.

- f. You must write to the relevant Customer Finance Department within three working days of any of the events set out in clause 5e or if there is any material change in:
- (i) the information supplied by you to us which we considered before granting credit facilities to you; or
  - (ii) the nature or value of your assets including but not limited to the crystallisation of any security.
- g. You must pay us by direct debit, BACS, credit or charge card or, with our prior agreement, cheque.
- h. If you fail to make a payment by the due date, without affecting our other rights and remedies, we may:
- (i) cancel the contract or suspend any further deliveries;
  - (ii) use or set off any payments you have made against any sums due as we decide;
  - (iii) reduce or cancel any discount and review the discount available to you in the future;
  - (iv) charge you for all and any costs and expenses we have incurred for the collection of any payments due (including but not limited to a charge of £25 plus VAT on each event that any cheque presented by you is returned unpaid or any standing order or direct debit instruction fails to operate and £50 arrears charge on each event that the collection of any sum due us is referred to a third party collection agency or legal agents including solicitors); and
  - (v) charge you interest (both before and after any judgement) on the amount you have not paid. We will use an annual rate of 5% above National Westminster Bank's base rate until you pay us in full. We will treat a part of a month as a full month for the

purpose of working out interest.

- i. If you fail to make any payment by a due date, you will be liable to pay all outstanding invoices immediately that are payable to us, or to any Companies.
- j. You are not entitled to withhold payment or use any amounts as a set off against any amount we may owe you.
- k. If you are liable to us, and as a result owe us money, under these conditions or otherwise (or to any of our subsidiaries, associates or holding companies), we may use any amount you owe us to pay off any amount that we (or any of our subsidiaries, associates or holding companies) may otherwise owe you.
- l. We can ask you to pay the full amount you owe or part of it or provide acceptable security before we make a delivery.

## **6. Risk and property**

- a. You will be responsible for any damage to or loss of the products from the time we deliver them or, if you fail to accept the products, the time when we tried to deliver them.
- b. You will not own any of the products in any circumstances until we have received cleared funds for all sums due to us in respect of:
  - (i) the products; and
  - (ii) all other sums which are or which become due to us from you on any account.
- c. Until you own the products, you will
  - (i) hold the products on a fiduciary basis as the Company's bailee;
  - (ii) store the products (at no cost to us) separately from all your other goods or those of any third party in such a way that they remain readily identifiable as our property;
  - (iii) not destroy, deface or obscure in any way any identifying mark or packaging on or relating to the products; and
  - (iv) maintain and store the products in satisfactory conditions and keep them insured on our behalf for their full price against all risks.
- d. You may sell the products before ownership has passed to you solely on the following conditions:
  - (i) any sale is in the ordinary course of your business at full market value and you shall hold the amount of the proceeds that represents the amount owed by you to us on behalf of us and you shall account to us accordingly; and
  - (ii) any such sale shall be a sale of our property on your own behalf and you shall deal as principal when making the sale.
- e. Until you own the products (and as long as you have not sold them), we will be entitled to enter your premises to repossess the products or ask you to deliver them to us. You grant to us, our agents and employees an irrevocable licence to, at anytime, enter any premises where the products are or may be stored in order to inspect or repossess the products.
- f. You are not entitled to promise, or use as security for any debts, any of the products which are still our property. If you do, you will have to repay us all amounts you owe unless you first get our written permission.
- g. Your right to the products shall terminate immediately if any of the circumstances set out in clause 5(e) apply.

## **7. Liability**

- a. We will not be liable to you for any shortages in the quantity we deliver, damage or loss, short-dated deliveries, or any faults in the products, unless you give us due notice in accordance with clause 7c below. We will not be liable for any faults in the products caused by abnormal storage conditions, deliberate damage, negligence, failure to follow our instructions or misusing the products. We will also not be liable for claims for any products which you have price-marked.
- b. If we accept liability under clause 7a, our liability is limited to making good any shortfall in delivery, replacement of any products which are damaged or faulty or to refund the cost of any products either using a credit note or payment refund. We are not liable to pay more than the net price of the products, less any settlement discount or other discount which may apply.

- c. You must write and notify us of any potential claim within three working days of the delivery. You must comply with our returns policy (or the returns policy current at the time of return and of which we shall have given you notice) and use our standard forms where relevant (for example, a 'missing goods claim form' in the case of shortages and a 'returns note' in the case of returned goods). You can ask us for copies of these. Each claim form and returns note must set out the reason for the claim and:
    - (i) your name and address;
    - (ii) the quantity, description, strength and pack size; and
    - (iii) the invoice number and date of the relevant invoice.Returns notes should also quote the product location number.
  - d. You must package any returned products covered by the Misuse of Drugs Act 1971 (or any amending or applicable legislation) separately and enter them on a separate returns note. You must phone Customer Services at the supplying branch of any of these returns.
  - e. You must package any returned products which are hazardous separately in line with the statutory safeguards which relate to handling hazardous chemicals. You must enter them on a separate returns note and let the driver or collections agent know, when they come to collect the products, in what way they are hazardous.
  - f. We will only accept any products you return which need storing at a specific temperature to correct a delivery error and as long as you have stored them correctly in the meantime. In these cases, you must return the relevant products no later than the next working day after they are delivered. They must be packaged separately and entered on a separate returns note. You must phone Customer Services at the supplying branch and tell them about any returns. You must also let the driver or collections agent know about the temperature conditions required.
  - g. We will only accept any medicinal products which are recalled by the manufacturer or product licence holder in line with the specific instructions given at the time of the recall. All products must be packaged separately, clearly identified as returns relating to the product or batch recall and accompanied by a separate returns note. The returns note must give details of the type of recall and, where appropriate, all batch numbers.
  - h. You must keep a copy of the returns note and the person responsible for collection must sign it to acknowledge that the products have been received. We may refuse any further claim for credit unless you can provide proof of collection if we ask for it.
  - i. You cannot return products we supply which are covered by a transfer order unless you have received authorisation from the manufacturer on whose behalf we supplied the products.
  - j. Unless we say differently in these conditions, we exclude to the fullest extent possible any conditions, warranties, representations and other terms expressed or implied by any law or Act of Parliament.
  - k. Unless we cause death or personal injury by our negligence, we will not be liable to you for any pure economic loss, consequential loss, loss of profit, loss of business, depletion or loss of good will (in each case whether indirect or direct) you suffer from our supplying any products or how you use or resell them. If we do accept liability we will not pay more than the price of the products you have ordered unless we say differently in these conditions.
  - l. We will not be liable for circumstances beyond our control, including but not limited to trade disputes, poor weather, breakdowns or natural disasters.
  - m. Our employees or agents are not authorised to make any claims about the products unless we confirm the claims in writing.
  - n. We will not be liable for any advice or recommendation our employees or agents give you about storing or using the products unless we confirm this information in writing.
  - o. We are entitled to charge, and you will pay, a returns surcharge.
- 8. Your information**
- a. You agree to Us using your personal data (including, without limitation, sales data) collected from you in your capacity as an unincorporated trader for administration, marketing, risk assessment, analysing your purchasing preferences, statistical analysis,

- credit checking and to let you know (by mail, telephone, fax or email) about other products and services offered by us which we think will be of interest to you.
- b. We will also communicate your personal data amongst the Companies (see below), and we also may share your personal data with other members of the Alliance Boots Limited group of companies ('Alliance Boots Group') and may contact you from time to time with details of pharmaceutical products and services that may be of interest to you. Should you not wish to receive such communication, please notify us by providing us with your details or by writing to the Data Protection Officer at the address given in 9C.
  - c. If you are a member of a Companies' buying group, we will communicate your personal data to the buying group to which you belong to enable it to act on your behalf according to the terms of your arrangements with it.
  - d. We will also communicate your personal data to other suppliers and manufacturers involved in the UK supply chain, who will utilise your information to help strengthen the business relationship between manufacturers, wholesalers and pharmacists. If you do not wish us to communicate your information to other suppliers and manufacturers involved in the UK supply chain, please notify us by writing to the Data Protection Officer at the address given in 9C.
  - e. We will at all times comply with the Data Protection Act 1998 Legislation and any subsequent regulations relating to the protection of your personal data. We undertake to ensure that appropriate technical and organisational measures are adopted by Us against unauthorised or unlawful processing of personal data and against accidental loss or destruction, or misuse of, or damage to your personal data.
  - f. We undertake to use your personal data solely as set out in these terms and for the purpose of performing the services to You. If you wish to amend or update your personal information or wish us to delete information about You please notify us by writing to the Data Protection Officer at the address given in 9C although we must hold relevant data about you to enable us to provide the services to you.

## **9. General**

- a. We will be entitled to transfer to any other person all or any of our rights or the benefit of those rights created by any contract between us and you to which these conditions apply (or both).
- b. You will not be entitled to transfer to any other person or company all or any of your rights, or the benefit of those rights, created by any contract between us to which these conditions apply.
- c. Any notice given under these conditions must be in writing and addressed to: (i) you at the agreed delivery address or any other address you have told us about; or (ii) us at the relevant Companies registered office set out below. Please mark any notice for the attention of the Company Secretary.
- d. No waiver or retraction of a waiver by us under these conditions will be valid or binding unless it is in writing and signed by us. Our failure to exercise any right under these conditions, or to require your performance of any provision under these conditions, or our waiver of any breach of these conditions, will not prevent a subsequent exercise or enforcement of such provisions or be deemed a waiver of any subsequent breach of the same or any other provision of these conditions.
- e. If at any time:
  - (i) any of these conditions should be wholly or partly illegal, invalid or unenforceable, then such illegality, invalidity or enforceability will not affect the other remaining conditions in any way;
  - (ii) any of these conditions should be wholly invalid or unenforceable but would be valid or enforceable if some part of the condition were deleted, then the condition in question shall apply with such modification as may be necessary to make it valid and enforceable.
- f. You agree with us that except as expressly provided in clauses 5(i) and 5(k) no term of these conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

- g. We reserve the right to make a charge of £10 per copy for any copy document you request we provide.
- h. These conditions are governed by English law. The Courts of England and Wales shall have non-exclusive jurisdiction.

Alliance Healthcare (Distribution) Limited (Registered No. 3446039) has its registered office at 43 Cox Lane, Chessington, Surrey KT9 1SN, Cordia Healthcare Limited (Registered No. 05922789) has its registered office at 43 Cox Lane, Chessington, Surrey KT9 1SN and OTC Direct Limited (Registered No. 03118885) has its registered office at 3<sup>rd</sup> Floor Page House, 40 East Street, Epsom, Surrey, KT17 1BH.