

# CONDITIONS OF SALE ("CONDITIONS")

## 1. Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings: "Affected Goods" means Goods subject to recall as determined from time to time by the Company;

"Business Days" means all weekdays except for Saturdays, Sundays and public or Bank Holidays in the United Kingdom;

"Company" means Upjohn UK Limited, a company incorporated in England (registered number 11678221) whose registered office is at Ramsgate Road, Sandwich, Kent CT13 9NJ;

"Contract" means any contract between the Company and the Customer for the sale of Goods, which contract shall be deemed on these Conditions;

"Customer" means the person(s), firm or company who purchases the Goods from the Company;

"Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them); and "Order" means an order of goods placed with the Company or its authorised representative.

## 2. Basis of Contract

2.1 Each Contract for the sale of Goods will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any Order, confirmation of Order or other document whatsoever and whenever).

2.2 All descriptions, illustrations and specifications contained in the Company's and/or the Company's authorised representative's catalogues, brochures and websites are for illustration only and do not form any part of these Conditions.

2.3 Each Order shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions. It is the Customer's obligation to ensure that its Order is complete and accurate and placed by an authorised employee, agent or contractor only and to ensure that the delivery address complies with any regulatory and registration requirements in full. The quantity required must be in multiples as set out in the Company's published price list. Any Orders NOT in these multiples will be rounded up to the nearest multiple.

2.4 No Order placed by the Customer shall be deemed to be accepted by the Company and no Contract formed until despatch of the Goods to the Customer or (if earlier) confirmation of acceptance in writing. Any Order shall be accepted entirely at the discretion of the Company and the Company reserves the right to accept part only of any Order.

2.5 No variation to these Conditions or representations about the Goods shall be effective unless agreed and signed by the Company in writing.

## 3. Delivery and Acceptance of Goods

3.1 Unless otherwise agreed, delivery of the Goods shall take place at the Customer's normal place of business during normal business hours provided that, to the best of the Company's knowledge, such place of business complies with any regulatory and registration requirements in full.

3.2 Any dates and/or times specified for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence. If no dates and/or times are so specified, delivery will be within a reasonable time.

3.3 The Company reserves the right to deliver all or any part of the Goods in instalments at its discretion. Where delivery is by instalment, each instalment shall be treated as a separate Contract and will be invoiced separately.

3.4 The Customer will provide adequate and appropriate equipment and support to enable it to take delivery of the Goods. On delivery of the Goods, the Customer will acknowledge receipt of the Goods in writing. For the avoidance of doubt, the signature of any person working at the delivery address shall be proof that the Customer has accepted delivery of the Goods in full. In the absence of any such acknowledgement of receipt, the quantity of any consignment of Goods as recorded by the Company or its authorised representative on despatch shall be conclusive evidence of the quantity received by the Customer unless the Customer can provide conclusive evidence proving the contrary.

3.5 Where, within ten (10) Business Days after the delivery date, the Customer fails to return undamaged to the person which delivered the Goods any returnable pallets or containers in which the Goods were delivered, the Company shall be entitled to charge the Customer for the replacement cost in respect of such pallets or containers.

## 4. Passing of Risk and Legal Title

4.1 Title to the Goods will pass to the Customer at the point of despatch by the Company or its authorised representative, even if the Company is unable to or fails to deliver the Goods.

4.2 The Goods shall be at the risk of the Customer (including for damage to or loss of the Goods) from the time of delivery in accordance with Condition 3.1.

4.3 If, for any reason, the Customer fails or is unable to accept delivery of Goods (or any parts thereof) in accordance with Condition 3.1 when the Company or its authorised representative is ready to deliver them or the Company or its authorised representative is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, licences or authorisations or the delivery premises do not comply with registration and regulatory requirements in full then the Goods will at such time be deemed to have been delivered, risk passing to the Customer, and the Company may invoice the Customer immediately for the Goods and:

(a) store the Goods until actual delivery; and/or

(b) following a reasonable period, cancel or suspend its performance of the Contract, whereupon the Company shall be entitled to charge the Customer all costs and expenses relating to storage, re-delivery, insurance and/or destruction.

## 5. Price and Payment

5.1 The price for the Goods will be the price set out in the Company's published price list current at the time of the Company's receipt of the Order less any applicable discount notified to the Customer in writing by the Company. The price is exclusive of VAT and all other taxes, duties and expenses in respect of the Goods which shall be added to the price and payable by the Customer.

5.2 Unless otherwise agreed, any discount shall be confidential and may be disclosed only to those of the Customer's representatives who need to know such discount provided that the Customer informs such representatives of the confidential nature of the discount prior to disclosure and at all times the Customer is responsible for such representatives' compliance with these confidentiality obligations. From the date of the Contract and for 5 years afterwards the Customer agrees to keep the discount confidential and not disclose to any third party the discount or use any information relating to the discount other than for the Contract except: 1) where the discount is or has become public knowledge prior to disclosure; or 2) where the discount was already lawfully in your possession at the time of receipt from the Company; or 3) where the discount was, is or becomes lawfully obtained by you from a third party having the right to disclose it free from any obligations of confidentiality; or 4) where the parties agree in writing that discount is not confidential or may be disclosed; or 5) where the discount is, subject to the paragraph below, required to be disclosed as a matter of law. In the event that an application is made to the Customer under the Freedom of Information Act 2000 ("FOIA") or the Environmental Information Regulations (the "EIR") for disclosure of the discount the Customer agrees to use its best endeavours to promptly notify the Company. The Customer will allow the Company reasonable opportunity (at least 5 working days) to submit representations in relation to such disclosure, and will take such representations into account, before a decision is made by the Customer in relation to disclosure of the discount. Should the Customer decide to disclose any discount in response to a request under FOIA, contrary to representations submitted by the Company, the Customer will advise the Company of its decision at least 3 working days before giving such disclosure.

5.3 The price for the Goods shall include the cost of all deliveries and collections made in accordance with these Conditions. The Company may, however, make an additional charge for urgent express deliveries or collections.

5.4 Unless otherwise agreed in writing, payment of the price for the Goods is due by 2.30pm on the last Business Day of the month following the month in which the invoice is dated. Payment will be deemed to have been received on this day for all Customers paying by way of direct debit mandate on the last Business Day of the month following the month in which the invoice is dated. The Customer shall pay the full amount shown due on the invoice without making any unauthorized deductions therefrom. Time for payment shall be of the essence.

5.5 Unless otherwise notified by the Company, the Customer shall make all payments due under the Contract to the person, and at the address, specified in the invoice or, in the absence of any such person or address being specified, to Unichem Limited, Credit Control Department, UniChem House, Cox Lane, Chessington, Surrey KT9 1SN.

5.6 If any sum due from the Customer to the Company under the Contract is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and the Company shall be entitled to:

(a) cancel or suspend its performance of the Contract or any Order for which Goods have not been despatched or any future Order; and/or

(b) reduce or cancel any discount applied and/or available in the future; and/or

(c) require suitable security for any and/or all future deliveries; and/or

(d) use any amount due and payable to pay off any amount the Company may otherwise owe the Customer; and/or

(e) charge the Customer:

(i) interest calculated on a daily basis on all overdue amounts (both before and after judgment) from the due date for payment until actual payment at the rate of four per cent (4%) per annum above the base lending rate of Barclays Bank plc prevailing from time to time until payment is made in full; and/or

(ii) the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings, pursuing a debt recovery procedure or otherwise collecting any payment due under these Conditions.

5.7 The Company reserves the right to charge for the supply of any duplicate documentation requested by the Customer.

## 6. Limitation of Liability

6.1 The following provisions of this Condition 6 set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents, subcontractors and authorised representatives) to the Customer in respect of any breach of the Contract and/or any representation, statement or tortious act or omission arising under or in connection with the Contract.

### 6.2 Returns and Missing Goods

6.2.1 Goods may only be returned in accordance with these Conditions and the Medicines and Healthcare products Regulatory Agency Guidance on Good Distribution Practice and by the Customer to whom they were delivered. Returned Goods requiring temperature-controlled storage will only be accepted to correct a delivery error.

6.2.2 The Customer will be deemed to have accepted the Goods and each delivery as being in accordance with the Contract unless the Customer has notified the person which delivered the Goods of any claim that the Goods are defective, missing or fail to conform with the Contract:

(a) within **twenty-four hours** of the date of expected delivery for a claim that Goods are missing or for a delivery error claim relating to Goods requiring temperature-controlled

storage and within **three Business Days** of the date of delivery for all other claims; and (b) using the relevant and appropriate documentation provided by the person which delivered the Goods stating the reason for the claim, the Customer name and address, the quantity of Goods affected, a description of the Goods affected (including, but not limited to strength and pack size), the invoice number and the date of the relevant invoice, failing which, the Customer shall not be entitled to make a claim and shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract and the Company shall have no liability for any loss, damage, defect or failure.

6.2.3 Following a claim that Goods are defective or fail to conform with the Contract, the Customer shall make such Goods available for collection by the Company or its authorised representative in accordance with the instructions of the Company or its authorised representative. On collection, the Customer must ensure that the Company's authorised representative acknowledges collection of the Goods in writing.

6.2.4 Following collection in accordance with Condition 6.2.3 and inspection by the Company or its authorised representative, the Company shall, if it does not accept liability for any damage or failure of the Goods to conform with the Contract, return the Goods to the Customer or, if it does accept liability for any damage or failure of the Goods to conform with the Contract, at its sole discretion either replace such Goods with Goods which are in all respects in accordance with the Contract or issue a credit note to the Customer in respect of the invoice price of the returned Goods less any additional discount or rebate that has been deducted or paid by the Company provided that:

- (a) the Goods have been returned in a new and unused condition;
  - (b) no packages or containers have been opened nor contents partly used and no seals or labels have been broken or defaced; and
  - (c) any Goods requiring storage in a temperature-controlled environment have been properly stored while at the Customer's premises
- and provided that performance of any one of the above options shall constitute an entire discharge of the Company's liability.

6.2.5 The Company reserves the right to destroy or procure the destruction of all returned Goods (including unsolicited returns) in the interests of safety and accepts no liability to keep, return or otherwise deal with such Goods.

6.2.6 If, following a claim that the Goods are missing, the Company accepts liability for such claim, the Company shall at its sole discretion either deliver to the Customer Goods which are in all respects in accordance with the Contract or issue a credit note to the Customer in respect of the invoice price of the missing Goods less any additional discount or rebate that has been deducted or paid by the Company.

6.2.7 The Company may, in its absolute discretion, accept returns of Goods ordered by the Customer in error and, in such circumstances, the provisions of Conditions 6.2.1 to 6.2.5 will apply.

6.2.8 From time to time, the Company will review Customer return levels. If return levels vary significantly from expected levels, the Company reserves the right to withhold future credits on all or a proportion of returned Goods.

## 6.3 General

6.3.1 Unless otherwise stated in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

6.3.2 Nothing in these Conditions shall exclude or limit the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation.

6.3.3 Subject to Condition 6.3.2:

- (a) the Company shall not be liable for any economic loss or loss of profit (direct or indirect), or any indirect, special or consequential loss or damage howsoever caused;
- (b) the total aggregate liability of the Company for breach of Contract shall in no event exceed the price paid or payable by the Customer for the Goods in respect of which the claim relates; and
- (c) the Company shall be under no liability under the Contract in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal storage conditions, failure to follow the Company's or its authorised representative's instructions (whether oral or in writing), misuse or alteration of the Goods without the Company's approval or if the Customer makes any further use of the Goods after giving notice in accordance with Condition 6.2.2.

## 7. Recall of Goods

7.1 If, for any reason, the Company shall in its sole discretion deem a recall of Goods to be appropriate, the Customer shall, upon notification from the Company (which may be made verbally and subsequently confirmed in writing), follow all reasonable instructions of the Company and render all reasonable assistance as may be requested by the Company and, in particular shall:

- (a) make available for collection by the Company or its authorised representative all the Affected Goods; and
- (b) provide such assistance and/or information as the Company may reasonably require.

7.2 The Company shall be responsible for the cost of collection of Affected Goods from the Customer and will make the necessary arrangements for such collection.

7.3 Affected Goods made available for collection by the Customer will be credited by the Company at invoice price less any additional discount or rebate that has been deducted or paid by the Company or replaced by the Company with equivalent Goods.

7.4 The Company reserves the right to destroy all Affected Goods in the interests of safety and accepts no liability to keep, return or otherwise deal with such Affected Goods.

## 8. Prohibition on Sales Outside the European Economic Area or Switzerland and/ or by Unauthorised Persons

8.1 The Customer may not at any time, directly or indirectly, export any of the Goods to a country outside the European Economic Area (EEA) or Switzerland. In addition, the Customer shall not sell, transfer or distribute any of the Goods to any person (a) that it knows, or has reasonable grounds for believing, will or may export such Goods out of the EEA or Switzerland, and (b) without first requiring such person to be bound by this export restriction. Any breach of this Condition 8.1 will preclude the Customer from purchasing any further Goods from the Company, until such time as the Company is satisfied, in its sole discretion, that the Customer will not further breach this Condition 8.1.

8.2 Where Goods may only be supplied to the public by persons who are authorised, the Customer will ensure that the Goods are only supplied to the public by authorised persons.

## 9. Subcontracting, Assignment and Third Party Rights

9.1 The Customer shall not be entitled to assign, charge, subcontract or transfer the Contract or any part of it without the prior written consent of the Company. The Company may assign, charge, subcontract or transfer the Contract or any part or parts of it to any person.

9.2 Save that the parties intend that any agent or representative of the Company shall have the benefit of or right to enforce all or any part of these Conditions, the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract and no third party shall have the benefit of or the right to enforce these Conditions. The parties may, notwithstanding section 2 (1) of the Contracts (Rights of Third Parties) Act 1999, vary or cancel the Contract by agreement between them without requiring the consent of any third party.

## 10. Force Majeure

10.1 Deliveries may be totally or partially suspended by the Company during any period in which it or its affiliates, agents, sub-contractors or authorised representatives may be prevented or hindered from manufacturing, supplying or delivering by normal route or means of delivery the Goods, through any circumstances outside the control of the Company, including but not limited to strikes, lockouts, accidents, war, fire, breakdown of plant or machinery, shortage or unavailability of materials or industrial dispute.

## 11. Breach of Contract or Insolvency

11.1 The Company may immediately suspend performance of the Contract, cancel any outstanding deliveries of the Goods, stop any Goods in transit or by notice in writing to the Customer terminate the Contract without liability to the Customer if:

- (a) the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy or fails to remedy a breach of its obligations under the Contract which is capable of remedy, or persists in any breach of any of its obligations under the Contract after having been requested in writing by the Company to remedy or desist from such breach within a period of 14 days; or
- (b) the Customer enters into bankruptcy, individual voluntary arrangement, liquidation, receivership, administration or into a corporate voluntary arrangement as defined by the Insolvency Act 1986 or the Company has reason to doubt the credit worthiness of the Customer; or
- (c) the Customer commits a breach of Condition 5.2 of these Conditions.

11.2 Notwithstanding any such termination or suspension in accordance with Condition 11.1 or Condition 5.6, the Customer shall pay the Company for all Goods delivered up to and including the date of suspension or termination and invoiced by the Company or its authorised representative.

11.3 Termination of the Contract for any reason shall be without prejudice to the rights and remedies of either party which may have accrued up to termination.

## 12. General

12.1 Any intellectual property rights created by the Company in the course of the performance of the Contract or otherwise in the manufacture of and/or in the Goods shall remain the Company's property. Nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the intellectual property rights of the Company.

12.2 The waiver by either party of any breach of the Contract shall not prevent the subsequent enforcement of that breach and shall not be deemed to be a waiver of any subsequent breach of that or any other provision. No waiver of these Conditions shall be effective unless written and signed by the party against whom enforcement of the waiver is sought.

12.3 If any Condition or part thereof is held to be invalid or unenforceable (whether wholly or partly) for any reason, such Condition shall be deemed severable to the extent of such invalidity and the other Conditions shall not be affected.

12.4 The Contract sets out the entire agreement and understanding between the Customer and the Company in connection with the sale of the Goods and shall supersede and replace all and any documentation previously issued by the Company. In the event of any conflict between these Conditions and any other documentation issued by the Company (save for any variation or replacement of these Conditions) or its authorised representative, these Conditions shall take precedence.

## 13. Law and Jurisdiction

13.1 The construction, validity and performance of these Conditions and the Contract shall be governed by English law and be subject to the exclusive jurisdiction of the English courts.