

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. INTERPRETATION

In these Conditions, the following definitions apply:

**Conditions:** the terms and conditions set out in this document.

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

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

**Ex-works:** the arrangement by which the Customer shall be responsible for the collection of Goods from the Supplier's premises, the arrangement of insurance of such Goods, export clearance and all transportation costs.

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

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or as has been orally agreed between the Customer and the Supplier

**Supplier:** Necessity Supplies Limited (registered in England and Wales with company number 02010112).

### 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. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

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 are complete and accurate.

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

### 3. DELIVERY

3.1 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall use reasonable endeavours to supply by agreed delivery dates but shall not incur any liability whatsoever for any loss or damage resulting from delay howsoever caused.

3.2 Unless otherwise stated in the Contract, the price of the Goods shall include the cost of delivery where the agreed delivery location is within the United Kingdom. Orders made from outside the United Kingdom are on an Ex-works basis.

3.4 If the Customer fails to accept delivery of the Goods on the date of delivery, the Supplier will be entitled, at its sole discretion and without prejudice to its other rights, either:

- (a) to store the Goods at the risk of the Customer and the Customer shall pay all costs and of carriage incurred; and
- (b) to terminate the Contract with immediate effect and dispose of the Goods as the Supplier may determine.

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

3.6 The Customer shall accept the supply of such quantity of the Goods (whether more or less) as reasonably approximates to the amount stipulated in the Order.

### 4. PRICE AND PAYMENT

4.1 The price of the Goods shall be the price set out in the Order.

4.2 The Supplier shall be entitled to increase the price for the Goods at any time prior to delivery to take account of increases in costs including (but not limited to) labour, overheads and transport.

4.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

4.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

4.5 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 of payment is of the essence.

4.6 If the Supplier has grounds for believing that the Customer may not be able to fulfil its payment obligations, the Supplier shall be entitled to require from the Customer suitable security for such payment obligations prior to delivery of the Goods.

4.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**due date**), then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above Bank of England base rate from time to time or such rate as is set down in any relevant statute. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

4.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. 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.

### 5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery, or if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.

5.2 Title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full for all Goods delivered to the Customer under this and all other Contracts between the Supplier and the Customer for which payment of the full price of the Goods thereunder has not been paid. Payment of the full price of the Goods shall include the amount of any interest or other sum payable under the terms of the Contract and all other Contracts between the Supplier and the Customer under which the Goods were delivered

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as the Supplier's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2; and
- (f) give the Supplier such information relating to the Goods as the Supplier may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, 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.

### 6. RECALL OF GOODS

6.1 Where a recall of Goods has been issued, the Customer shall, upon notification from the Supplier:

- (a) return to the Supplier all recalled goods; and
- (b) notify the Supplier in writing of all of the buyers to whom the recalled goods have been sold.

6.2 The Supplier shall be responsible for the collection of the recalled goods and for the reasonable cost of such collection from the Customer.

6.3 If it is not possible to replace the recalled goods within a reasonable period of time after the recall, the Supplier shall supply to the Customer a credit note to the value of the recalled goods retained by the Supplier.



**NSL GROUP**

PHARMACEUTICAL WHOLESALERS

## STANDARD TERMS AND CONDITIONS OF SALE

- 7. CUSTOMER'S INSOLVENCY OR INCAPACITY**
- 7.1 If the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 7.2 For the purposes of clause 7.1, the relevant events are:
- (a) makes any voluntary arrangements with its creditors;
  - (b) or becomes subject to an administration order;
  - (c) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction);
  - (d) or ceases or threatens to cease to carry on business;
  - (e) or if an encumbrance takes possession or a receiver is appointed, of any of the property or assets of the Customer;
- 7.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 8. LIMITATION OF LIABILITY**
- 8.1 The Customer shall be responsible for inspecting the Goods for quantity or patent defects upon delivery by the Supplier.
- 8.2 The Supplier shall not be liable for loss of or damage to Goods caused in transit or for any claim that the Goods are defective or do not otherwise comply with the Contract unless written notice is given by the Customer to the Supplier:
- (a) within 3 working days of the date of delivery in the case of loss, damage, defect or non-compliance with the Contract; and
  - (b) within 3 working days of the date upon which the Customer receives the invoice for the delivered Goods, in the case of non-delivery.
- 8.3 If the Customer fails to give notice in accordance with 8.2 above, it shall be deemed to have accepted such Goods and shall be bound to pay the full price of the Goods and all claims in respect of loss, damage, defect, non-compliance or non-delivery, shall thereafter be wholly barred.
- 8.4 If the Customer has a valid claim for defect, loss, damage or non-compliance with the Contract, the Supplier shall at its option repair or replace the Goods, or refund the price of the Goods in full.
- 8.5 The Supplier shall not be liable for any defect in the Goods in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 8.2;
  - (b) 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;
  - (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
  - (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 8.6 Subject to clause 8.8:
- (a) the Supplier shall not under any circumstances 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
  - (b) 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 the total invoice price of the Goods in respect of which the claim relates, less any discount given and excluding any VAT.
- 8.7 Nothing in these conditions shall operate so as to exclude or in any way limit either party's liability for fraud, for death or injury caused by its negligence, for defective products under the Consumer Protection Act 1987 or for breach of terms implied by section 23 of the Sale of Goods Act 1979.
- 8.8 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.
- 8.9 These Conditions shall apply to any repaired or replaced Goods supplied by the Supplier.
- 9. FORCE MAJEURE**
- Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.
- 10. ASSIGNMENT AND SUBCONTRACTING**
- 10.1 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 10.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11. SEVERANCE**
- 11.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12. WAIVER**
- The waiver by the Supplier of any right, or the failure by the Supplier to exercise any right or to insist on the strict performance of any provision of the Contract, shall not operate as a waiver of or preclude any further exercise or enforcement of or other exercise or enforcement by the Supplier of that or any other right or provision.
- 13. THIRD PARTY RIGHTS**
- No term of this agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 14. VARIATION**
- Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.
- 15. GOVERNING LAW AND JURISDICTION**
- The Contract, and any dispute or claim arising out of or in connection with it shall be governed by, and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.