

# CSL BEHRING UK LIMITED

## TERMS AND CONDITIONS FOR THE SUPPLY OF MEDICINAL PRODUCTS

### 1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

**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 condition 11.6.

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

**CSL Behring:** CSL Behring UK Limited (registered in England and Wales with company number 01622483 and whose registered office address is 4 Milton Road, Haywards Heath RH16 1AH).

**Customer:** the NHS Trust, hospital, pharmacy or other person who purchases the Goods from CSL Behring.

**Goods:** the medicinal products or such other products (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

**Specification:** any specification for the Goods that is provided in writing to the Customer by CSL Behring.

**Unforeseen Event:** has the meaning given in condition 10.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 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.

1.2.4 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.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

## **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 provided by CSL Behring are complete and accurate.

2.3 The Order shall only be deemed to be accepted when CSL Behring determines it can deliver Goods in accordance with the Order, at which point the Contract shall come into existence. Once accepted, the Customer may not cancel such Order and all Goods are non-returnable and non-refundable, unless CSL Behring authorises the same in writing.

2.4 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 CSL Behring which is not set out in the Contract.

2.5 Any samples, descriptive matter, or advertising produced by CSL Behring and any descriptions contained in CSL Behring's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by CSL Behring shall not constitute an offer. A quotation shall only be valid for a period of 90 days from its date of issue.

## **3. GOODS**

3.1 The Goods are described in CSL Behring's catalogue as modified by any applicable Specification.

3.2 CSL Behring reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

## **4. DELIVERY**

4.1 CSL Behring shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and CSL Behring reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any).

4.2 CSL Behring 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 CSL Behring determines that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. CSL Behring shall not be liable for any delay in delivery of the Goods that is caused by an Unforeseen Event or the Customer's failure to provide CSL Behring with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If CSL Behring fails to deliver the Goods, its liability shall be limited to an obligation to refund the Customer the amount of money (if any) that the customer paid CSL Behring for those Goods. CSL Behring shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an Unforeseen Event or the Customer's failure to provide CSL Behring with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods at the Delivery Location when CSL Behring (or its representative) attempts delivery, then, except where such failure or delay is caused by an Unforeseen Event or CSL Behring's failure to comply with its obligations under the Contract:

4.6.1 Delivery of the Goods shall be deemed to have been completed upon such attempted delivery; and

4.6.2 CSL Behring shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 10 Business Days after the day on which CSL Behring notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, CSL Behring 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.

4.8 The Customer shall not be entitled to reject the Goods if CSL Behring delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.9 CSL Behring 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.

4.10 The Customer shall store the Goods in accordance with the instructions in the Specification or CSL Behring's oral or written instructions or (if there are none) good trade practice regarding the same and appropriate environmental conditions.

## 5. QUALITY

5.1 CSL Behring warrants that it has obtained relevant licences in respect of the importation, supply, sale, distribution and installation of the Goods and that they comply with all relevant statutory and compulsory regulations including, as applicable, the Medicines Acts 1968 and 1971, the Medical Devices Regulations 2002, "Guidelines on Good Distribution Practice of Medicinal Products for Human Use" issued under (94/C 63/03) and the MHRA's "Rules and Guidance for Pharmaceutical Manufacturers and Distributors".

5.2 CSL Behring warrants that, until the shelf life specified on the Goods (**warranty period**), the Goods shall: (a) conform in all material respects with their description and any applicable Specification, (b) be free from material defects; (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and (d) be fit for any purpose defined in any applicable Specification provided by CSL Behring.

5.3 Subject to condition 5.4, during the warranty period CSL Behring shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, within 30 Business Days of notification of any defect provided that: (a) the Customer gives notice in writing to CSL Behring that some or all of the Goods do not comply with the warranty set out in condition 5.2; (b) CSL Behring is given a reasonable opportunity of examining such Goods at the Customer's premises; and (c) the Customer does not remove the Goods from its premises and continues to store them strictly in accordance with CSL Behring's oral or written instructions.

5.4 CSL Behring shall not be liable for Goods' failure to comply with the warranty set out in condition 5.2 in any of the following events: (a) the Customer makes any use of such Goods after giving notice in accordance with condition 5.3; (b) the defect arises because the Customer failed to follow the instructions in the Specification as to the storage, commissioning, installation, use and maintenance of the Goods or CSL Behring's oral or written instructions or (if there are none) good trade practice regarding the same; (c) the Customer alters or repairs such Goods without the written consent of CSL Behring; or (d) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this condition 5, CSL Behring shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.2.

5.6 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.

5.7 These Conditions shall apply to any repaired or replacement Goods supplied by CSL Behring.

## **6. TITLE AND RISK**

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

6.2 Title to the Goods shall not pass to the Customer until CSL Behring has received payment in full (in cash or cleared funds) for: (a) the Goods; and (b) any other goods or services that CSL Behring has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall: (a) hold the Goods on a fiduciary basis as CSL Behring's bailee; (b) store the Goods strictly in accordance with CSL Behring's written or oral storage instructions and separately from all other goods held by the Customer so that they remain readily identifiable as CSL Behring'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 CSL Behring immediately if it becomes subject to any of the events listed in condition 8.1.3; and (f) give CSL Behring such information relating to the Goods as CSL Behring may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 8.1.3, or CSL Behring reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, and without limiting any other right or remedy CSL Behring may have, CSL Behring may promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **7. PRICE AND PAYMENT**

7.1 The price of the Goods shall be the price set out in CSL Behring's published price list in force as at the date of delivery or as otherwise agreed.

7.2 CSL Behring may, by giving notice to the Customer at any time up to 20 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to: (a) any factor beyond CSL Behring's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or (c) any delay caused by any instructions of the Customer or failure of the Customer to give CSL Behring adequate or accurate information or instructions.

7.3 The price of the Goods is inclusive of the costs and charges of packaging, insurance and transport of the Goods, unless otherwise agreed in which case they shall be invoiced to the Customer.

7.4 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 CSL Behring, pay to CSL Behring such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 CSL Behring may invoice the Customer for the Goods, together with any charges for packaging, insurance or transport of the Goods, on or at any time after the completion of delivery.

7.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by CSL Behring. Time of payment is of the essence.

7.7 If the Customer fails to make any payment due to CSL Behring 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 4% per annum above HSBC Bank's base rate from time to time. 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.

7.8 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 CSL Behring in order to justify withholding payment of any such amount in whole or in part. CSL Behring 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 CSL Behring to the Customer.

## **8. TERMINATION**

8.1 Without prejudice to any other right or remedy it might have, CSL Behring may terminate this Contract at any time by notice in writing to the Customer, such notice to take effect as specified in the notice, if:

8.1.1 the Customer is in material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 15 Business Days after receipt of notice from CSL Behring, requiring it to do so; or

8.1.2 Any Unforeseen Event prevents the Customer from performing its obligations under the Contract for any continuous period of three months; or

8.1.3 the Customer becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Customer (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of

the whole or any part of the Customer's assets or business, or if the Customer makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.

8.2 Without prejudice to condition 8.1, if the Customer becomes subject to any of the events listed in condition 8.1.3, or CSL Behring reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, CSL Behring may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and CSL Behring without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **9. LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall limit or exclude CSL Behring's liability for (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; (d) defective products under the Consumer Protection Act 1987; or (e) any matter in respect of which it would be unlawful for CSL Behring to exclude or restrict liability.

9.2 Subject to condition 9.1:

9.2.1 CSL Behring shall under no circumstances whatever 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

9.2.2 CSL Behring'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 100% of the price of the Goods.

## **10. UNFORESEEN EVENTS**

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 an Unforeseen Event. An **"Unforeseen 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.

## **11. GENERAL**

11.1 Assignment and subcontracting. CSL Behring 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. 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 CSL Behring.

11.2 Notices. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in above; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission. The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance. 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. 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.

11.4 Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 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 CSL Behring.



11.7 Governing law and jurisdiction. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), 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.

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