



AMDIPHARM

GENERAL TERMS AND CONDITIONS OF PURCHASE

1. **Interpretation**
- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions.
 - Business Day** a day (other than Saturday) on which banks are open for business in England;
 - Company** Amdipharm plc incorporated in England with company number 04606340 whose registered office is at 72 New Cavendish Street, London W1M 8AU;
 - Conditions Contract** these terms and conditions; the contract between the Company and the Supplier formed in accordance with Condition 2.2;
 - Goods** the goods (if any) to be provided by the Supplier under the Contract as set out in a Purchase Order;
 - Intellectual Property Rights** all copyright, trade marks, rights in goodwill or to sue for passing off, designs rights, rights in confidential information and any other intellectual property rights, in each case whether registered or unregistered and including any applications for any of the foregoing;
 - Price** the price of the Goods and/or the charge for the Services, or both (as the case may be);
 - Purchase Order** each written order placed by the Company with the Supplier for the supply of Goods, Services or both (as the case may be) incorporating these Conditions;
 - Services** the services (if any) to be provided by the Supplier under the Contract as set out in a Purchase Order;
 - Supplier** the person, firm or company who supplies the Goods or the Services to the Company as set out in a Purchase Order;
 - VAT** value added tax or any sales or equivalent tax.
- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 A reference to one gender includes a reference to the other gender and words in the singular shall include the plural, and vice versa.
- 1.4 Condition headings do not affect the interpretation of these Conditions.
2. **Application of Conditions**
- 2.1 Subject to any variation under Condition 2.4, these Conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 Each Purchase Order placed by the Company with the Supplier constitutes an offer by the Company to buy Goods or Services subject to these Conditions. No Purchase Order placed by the Company shall be accepted by the Supplier other than by the Supplier either issuing written notice of acceptance of the Purchase Order, or by fulfilling the Purchase Order (whichever is the earlier), when a contract for the supply and purchase of the Goods, the Services or both (as the case may be) on these Conditions will be established.
- 2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of Purchase Order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- 2.4 These Conditions apply to all the Company's purchases of Goods, Services or both (as the case may be) from the Supplier and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by both parties.
- 2.5 No Purchase Order is valid unless signed by an authorised representative of the Company.
3. **Commencement and Duration**
- 3.1 The Contract shall commence on the date it is formed in accordance with Condition 2.4 and shall continue until the Goods or Services have been supplied in accordance with the Purchase Order, unless the Contract is terminated in accordance with Condition 10.
4. **Supply of Goods and/or Services**
- 4.1 Where a Purchase Order specifies that the Supplier is to provide Goods:-
 - 4.1.1 the Goods shall be provided in accordance with these Conditions;
 - 4.1.2 the Goods shall be delivered (CIP Incoterms 2000) to the Company's place of business as specified in the Purchase Order or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods;
 - 4.1.3 the date for delivery shall be specified in the Purchase Order, or if no such date is specified then delivery shall take place within thirty (30) days of the Purchase Order;
 - 4.1.4 the Supplier shall ensure that each delivery of Goods is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. Unless otherwise stipulated by the Company in the Purchase Order, deliveries shall only be accepted by the Company during normal business hours on a Business Day;
 - 4.1.5 if the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense; and
 - 4.1.6 the Goods shall remain at the risk of the Supplier until they are delivered to the Company in accordance with the provisions of clause 4.1.1 when ownership of the Goods shall pass to the Company.
- 4.2 Where a Purchase Order specifies that the Supplier is to provide Services, the Supplier shall provide the Services in accordance with that Purchase Order and these Conditions.
- 4.3 If a Purchase Order specifies that the Supplier is to provide both Goods and Services, the provisions of Conditions 4.1 and 4.2 shall apply accordingly.
- 4.4 If the Goods, Services or both (as the case may be) are not supplied in accordance with the relevant Purchase Order then, without prejudice to any other rights which it may have, the Company reserves the right to:
 - 4.4.1 cancel the Contract in whole or in part;
 - 4.4.2 refuse to accept any subsequent supply of the Goods or the Services which the Supplier attempts to make;
 - 4.4.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods or Services (as the case may be) in substitution from another supplier; and



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- 4.4.4 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to supply the Goods or the Services (as the case may be) on the due date.
- 4.5 Where the Company agrees in writing to accept supply by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to supply any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 5. Price and Payment**
- 5.1 The Price shall be stated in the Purchase Order and unless otherwise agreed in writing by the Company shall be exclusive of VAT but inclusive of all other charges.
- 5.2 The Supplier may invoice the Company on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the relevant Purchase Order.
- 5.3 The Company shall pay the Price within thirty (30) days of receipt by the Company of the Supplier's invoice unless agreed otherwise in writing by the parties, but time for payment shall not be of the essence of the Contract.
- 5.4 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier.
- 5.5 No increase in the Price may be made by the Supplier without the prior written consent of the Company.
- 5.6 At the Company's written request, the Supplier shall provide written monthly statements of account to the Company in respect of Goods or Services supplied during the previous month.
- 6. Confidentiality**
- The Supplier shall keep in strict confidence all commercial know-how of a confidential nature disclosed to it by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier. The Supplier may disclose confidential information if required to do so by law always provided it gives the Company prior written notice of such disclosure.
- 7. Intellectual Property**
- 7.1 The Supplier assigns to the Company, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services.
- 7.2 The Supplier shall, promptly at the Company's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Company may from time to time require for the purpose of securing for the Company the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Company in accordance with Condition 7.1.
- 8. Warranties**
- 8.1 The Supplier warrants to the Company that the Goods:-
- 8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Company in writing at the time the Purchase Order is placed; and
- 8.1.2 will be free from defects in design, material and workmanship.
- 8.2 The Supplier warrants to the Company that the Services will be performed in a timely manner by appropriately qualified and trained personnel, with reasonable skill and care, and to such high standard of quality as it is reasonable for the Company to expect in all the circumstances.
- 8.3 Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Company shall be entitled:
- 8.3.1 to require the Supplier to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven (7) days; or
- 8.3.2 at the Company's sole option, and whether or not the Company has previously required the Supplier to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.
- 9. Indemnity**
- The Supplier shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (including but not limited to, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- 9.1.1 breach of any warranty given by the Supplier in relation to the Goods or the Services;
- 9.1.2 any infringement or alleged infringement of any Intellectual Property Rights arising out of the supply of the Goods or Services; and
- 9.1.3 any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the supply of the Goods or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.
- 10. Termination**
- 10.1 The Company may cancel the Purchase Order in respect of all or part only of the Goods and/or the Services by giving written notice to the Supplier at any time prior to delivery or performance.
- 10.2 Either party shall have the right at any time by giving notice in writing to the other to terminate the Contract immediately if:
- 10.2.1 the other party commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or
- 10.2.2 the other party (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors, or enters into liquidation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of that party or notice of intention to appoint an administrator is given by that party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of that party or for the granting of



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- an administration order in respect of that party, or any proceedings are commenced relating to the insolvency or possible insolvency of that party; or
- 10.2.3 the other party ceases or threatens to cease to carry on its business; or
- 10.2.4 the financial position of the other party deteriorates to such an extent that in the opinion of the notifying party the capability of the notified party adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of either party accrued prior to termination and Conditions 6, 7, 9, 10 and 12.9 shall survive and continue in full force and effect.
- 11. Force majeure**
Neither party shall be liable to the other if it is prevented from or delayed in the performance of its obligations under the Contract due to circumstances beyond its reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. If the circumstances preventing or delaying performance continue for more than one (1) month, either party may terminate the Contract immediately on written notice to the other.
- 12. General**
- 12.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 12.2 The Supplier shall not be entitled to assign, transfer or sub-contract the Contract or any part of it without the prior written consent of the Company. The Company may assign, transfer or sub-contract the Contract or any part of it to any person, firm or company.
- 12.3 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be illegal, invalid, or unenforceable it shall, to the extent of such illegality, invalidity, or unenforceability, be deemed not to form part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.
- 12.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 12.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 12.6 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty except as expressly provided in the Contract. Nothing in this Condition shall limit or exclude any liability for fraud.
- 12.7 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.8 Any notice required to be given pursuant to this Contract shall be in writing and shall be given by delivering the notice by hand at the address of the relevant party as set out in the Purchase Order or such other address as either party notifies to the other from time to time or by facsimile (with a confirming copy sent by prepaid first class post) during normal business hours on a Business Day. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand), and twenty-four (24) hours after it has been despatched (if given by facsimile). The parties agree that notices may not be sent by e-mail.
- 12.9 This 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 submit to the non-exclusive jurisdiction of the English courts.