

## **PHARMTECH (CARIBBEAN) LIMITED – TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 The definitions and rules of interpretation in these Terms and Conditions shall apply:-

- (a) “COD” means cash on delivery;
- (b) “Company” means PHARMTECH (CARIBBEAN) LIMITED;
- (c) “Customer” means the party to whom Goods will be delivered and whose name appears on the last page of these Terms and Conditions and/or on the bill of sale or invoice or delivery note together with any consignee and/or agent and/or representative and/or employee of such party;
- (d) “Defective” means any Good(s) as described in Part 6 of these Terms and Conditions and include but are not limited to:-
  - (i) cold chain Goods;
  - (ii) Goods which are expired or whose labels are missing or altered or covered or removed or unreadable; and
  - (iii) Goods which are improperly stored by the Customer;
- (e) “Goods” means any article, product, good or item sold by the Company; and
- (f) The singular includes the plural and the plural includes the singular; the masculine gender includes the feminine and (where necessary) the masculine gender is used to refer to corporations, firms or associations; the word person includes non-natural persons such as bodies corporate, firms, partnerships and any association of persons and the word individual means a natural person of legal age (18 or more) and with legal capacity.

### **2. APPLICATION OF TERMS**

- 2.1 Subject to any variation of these Terms and Conditions under Condition 2.3, the contract for sale between the Company and the Customer shall be governed by these Terms and Conditions to the exclusion of all other Terms and Conditions.
- 2.2 The signing by the Customer of the Company's invoice and/or delivery note or the acceptance of the Goods by the Customer shall constitute acceptance of the Terms and Conditions herein. For the avoidance of doubt, the signing of these Terms and Conditions by the parties means that these Terms and Conditions form part of each sales transaction until such time that these Terms and Conditions are revised in which case the new Terms and Conditions shall be binding.
- 2.3 These Conditions apply to the sale of all Goods by the Company and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a duly authorised director or officer of each party.
- 2.4 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Terms and Conditions.
- 2.5 Each written purchase order or acceptance of a quotation for Goods by the Customer from the Company shall be deemed to be an agreement by the Customer to purchase Goods subject to these Conditions.
- 2.6 Any written, email, fax, telephone, in-person or any other form of order which does not have a valid bill to address and/or ship to address shall not be accepted by the Company.
- 2.7 No order placed by the Customer shall bind the Company until the Customer's order has been accepted by the Company in writing, or by supplying the Goods to the Customer.
- 2.8 Any quotation is given on the basis that no contract for sale shall come into existence until the Company has accepted the Customer's order pursuant to Condition 2.6 above. Any quotation is valid for a period of 30 days only from its date (unless otherwise specified), provided that the Company has not previously withdrawn it.
- 2.9 The Customer warrants that:-
  - (a) it is properly authorised to purchase the Goods;
  - (b) it will provide the Company upon request with a valid authorisation to purchase the Goods; and

- (c) it will notify the Company immediately in writing if its authorisation to purchase the Goods is revoked, suspended or amended.

2.10 No order placed by the Customer which has been accepted by the Company pursuant to these Terms and Conditions may be cancelled, varied, or deferred by the Customer, (in whole or in part) except with the agreement in writing of the Company and subject to the payment of any corresponding costs incurred by the Company.

2.11 Pursuant to the Adverse Trade Practices Order 2000, the Customer must note that these Terms and Conditions does not limit or reduce or detract from their statutory rights as contained in the Sale of goods Act Chapter 82:30 or the Hire Purchase Act Chapter 82:33 or any other statute or legislative provision or legal order.

### **3. DESCRIPTION**

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation.

3.2 The Company may affect minor modifications to the specification of the Goods (including their packaging) without the Customer's approval in order to comply with any applicable safety or statutory requirements, or to effect enhancements to the Goods.

3.3 The Customer shall be solely responsible for ensuring the suitability of any Goods for any specific purpose.

### **4. DELIVERY**

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take effect upon dispatch of the Goods to the Customer from the Companies' premises.

4.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. The Customer must examine the Goods upon delivery and within three (3) working days thereafter notify the Company in writing of any defects including but not limited to manufacturer's defects.

4.3 If for any reason the Customer fails to take or accept delivery of any or all of the Goods, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or import authorisations:-

- (a) risk in the Goods shall pass to the Customer; and

- (b) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including storage, additional delivery charges and insurance)

4.4 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions agreed upon by the parties for such delivery.

## 5. NON-DELIVERY

No claim for non-delivery of the Goods shall be entertained unless the Company receives written notice of the non-delivery within five (5) days of the time that the Goods would ordinarily have been received, in which event the Company's liability shall be limited to either issuing a refund or replacing the Goods within a reasonable time or issuing a credit note.

## 6. RISK AND RETURN

6.1 The Goods should be checked thoroughly by the Customer at the time of delivery.

6.2 The Company reserves the right to refuse any return by the Customer on any Goods after six (6) months from the date which appears on the invoice as the date of the sale.

6.3 For the purposes of returns and, in keeping with general public health and safety measures, the following Goods will be deemed to be defective and are **not** returnable:-

- a) Goods with lot numbers or expiration dates missing, altered, covered, removed or unreadable;
- b) Goods damaged or deteriorated due to conditions beyond the Company's control, such as improper storage or handling (including but not limited to storage under improper conditions such as improper temperature or exposure to fire, smoke, or water);
- c) partial and/or whole Goods not in sealed and/or original packaging; and
- d) any cold chain Goods such as drugs, products, medicines and/or medicators including but not limited to vaccines, glaucoma eye drops, asthma aerosol sprays and insulin; this is on the basis that the Company cannot verify that the cold chain Goods have been maintained by the Customer within the narrow temperature range within which these Goods will remain viable for return as safe saleable stock.

6.4 In the event that the Customer requests to return the Goods and the Goods are not defective, the Company may (at the Company's discretion):-

- (a) issue a cash refund; or
- (b) replace the Goods; or
- (c) issue a credit note for purchase of another item to replace the returned Goods.

6.5 Claims on Goods shall be subject to the following:

- (a) a replacement of the Goods or a credit note for purchase of another item to replace a returned Good may be issued within 15 days from the date of delivery of a returned Good, provided the returned Goods are in their original condition and packaging and are accompanied by the original invoice; and
- (b) the Company may, in its discretion and in special circumstances, issue credit notes after 15 days from the date of delivery, less a 10% handling charge.

## **7. PRICE**

7.1 The price for the Goods shall be the price stated in the quotation, written agreement or contract for sale between the Company and Customer or the Company's list price for the Goods current at the time of receipt of the Customer's order.

7.2 All unit prices are subject to the applicable Value Added Tax (V.A.T.) rate as prescribed by law, unless exempt from VAT.

7.3 Unless otherwise agreed in writing by the Company, prices shall be listed as exclusive of V.A.T. but the V.A.T. sum will be quantified and included by the Company on the quotation and/or invoice.

## **8. PAYMENT**

8.1 The Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after acceptance of the Customer's order.

- 8.2 Payment is due within thirty (30) days of the date of invoice, unless otherwise agreed in writing.
- 8.3 The time of payment shall be of the essence of each contract for sale.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds. If a Customer's cheque is returned unpaid to the Company, the Customer shall reimburse the Company for any bank charges incurred by the Company.
- 8.5 The Customer shall make all payments due under each invoice in full without any deduction.
- 8.6 Any failure by the Customer to pay the Company by the due date shall entitle the Company, without limiting any other remedy available to the Company:-
- (a) to charge interest at the rate of 2% per month or any part thereof for the bills unpaid after seven (7) days from the date of delivery for COD invoices and the due date for invoices with stated credit terms at the front page(s) thereof;
  - (b) to charge the Customer for any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;
  - (c) to set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever; and
  - (d) to immediately terminate the sale or suspend or cancel the further delivery of any Goods supplied by the Company.
- 8.7 All payments payable to the Company under these Terms and Conditions and under the contract for sale shall become due immediately on its termination notwithstanding any other provision.
- 8.8 If there is non-payment of all or part of an invoice by a Customer, the Company may (*without prejudice* to its other rights) either recover or resell the Goods and may enter upon any premises of the Customer or any third party where the Goods are reasonably thought to be stored for that purpose. The Customer shall refund to the Company, all attorney's, bailiff's, agent's and other fees, charges, costs and expenses whatsoever incurred or

payable by the Company, in or about the recovery of all sums due to or Goods remaining the property of the Customer under the provisions hereof.

8.9 Title to the Goods shall remain with the Company until full payment of the Company's invoice but the Goods shall be at the Customer's risk from the time of delivery.

## **9. WARRANTIES**

The Company warrants that upon delivery the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act Chapter 82:30; and if the Goods do not conform to the applicable warranties, the Company shall replace the Goods or issue a credit note for the Goods.

## **10. INDEMNITY**

The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities to the extent that any such liabilities arise directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the contract for sale or these Terms and Conditions.

## **11. CONFIDENTIALITY**

The parties agree that each party will maintain the confidentiality of any information which has been designated as or which could reasonably be supposed to be confidential and shall not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any such confidential information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party.

## **12. FORCE MAJEURE**

The Company reserves the right to defer, reduce or cancel the delivery of Goods ordered by the Customer (without liability to the Company) if it is prevented from or delayed in conducting its business due to circumstances beyond its reasonable control, including Acts of God, governmental, or local authority actions, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind, war, sabotage, insurrection, civil disturbance or requisition or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, accident, import or export regulations or embargoes, restraints or delays affecting carriers or any inability or delay in obtaining supply of adequate or suitable materials.

## **13. GENERAL**

- 13.1 The formation, existence, construction, performance, validity and all aspects of the contract for sale and these Terms and Conditions shall be governed by Trinidad and Tobago law and the parties submit to the non-exclusive jurisdiction of the local courts.
- 13.2 No omission by the Company to enforce any right hereunder shall operate as a general waiver thereof nor prejudice the Company in the future enforcement of such right, whether original or recurring.
- 13.3 If any term or condition hereof is held to be invalid, illegal or unenforceable, this shall not affect the validity, legality or enforceability of the other Terms and Conditions herein.