



Nupharm Limited
Trading as Nupharm Direct
Conditions of Sale

1. Definition and Interpretation

“the Company”	Means Nupharm Limited, a company registered in England and Wales under CRN 4897067 whose registered office is at Rivington Road, Whitehouse Industrial Estate, Preston Brook, Runcorn, Cheshire WA7 3DJ, trading as Nupharm Direct.
“the Customer”	Means the body, company, organisation, partnership or individual who is supplied with Goods by the Company and who are bound by these terms and conditions.
“Contract”	Means a contract for the sale of Goods by the Company to the Customer which incorporates these terms and conditions.
“Goods”	Means any goods which the Company agrees to supply to the Customer and any part or parts thereof.
“Order”	Means an order for Goods placed with the Company or its authorised representatives and Associated Companies.
“Associated Companies”	Means in relation to a party, any company, organisation, partnership or individual controlled by, controlling or under common control with that party, control being the ownership of greater than fifty per cent (50%) of the voting shares or interest of such entity, or such other relationship as, in fact, constitutes de facto control.
“Normal Business Hours”	Means Monday to Friday between 09.00 hrs and 17.00 hrs excluding bank and other statutory holidays.

The headings in these terms and conditions are intended for reference only and shall not affect their construction.

2. Basis of Contract

- 2.1 These terms and conditions will apply to all Orders placed by the Customer and shall prevail over and operate to the exclusion of any other terms and conditions issued by the Customer or otherwise implied.
- 2.2 All descriptions illustrations and specifications contained in any of the Company's authorised brochures, price lists, websites or any other media whatsoever are for illustration only and shall not form any part of any Contract.
- 2.3 These terms and conditions may only be amended by an officer of the Company; no employee, representative, agent or salesperson has the Company's authority to vary, amend or waive any of these terms and conditions on behalf of the Company.

3. Retention of Title

- 3.1 Goods that are supplied by the Company to the Customer shall remain at all times the property of the Company until full payment for such Goods and all other sums due to the Company from the Customer has been received by the Company in cleared funds.
- 3.2 The Customer agrees:
- (i) to keep all Goods supplied by the Company in such manner and with such markings as to enable such stock to be immediately identifiable;
 - (ii) to keep the Goods free from any charge, lien or encumbrance;
 - (iii) not to destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (iv) to maintain the Goods in satisfactory condition and observe all directions for storage of the Goods given by the Company or the manufacturer (including where necessary all directions relating to cold storage); and
 - (v) subject to Condition 3.3, not to part with possession of the Goods.
- 3.3 The Customer may sell Goods supplied by the Company in the normal course of business as an agent and bailee for the Company, the proceeds from such sales to be held separately to the account of the Company up to the amount of the full purchase price of the Goods sold.
- 3.4 The Customer's right to sell Goods for which it has not paid the Company in full shall terminate immediately upon any one of the following occurrences;
- (i) if any petition is presented applying to the court for the winding up of the Customer or for any Administration Order in respect of the Customer;
 - (ii) a resolution is made for the Customer's winding up or dissolution;
 - (iii) on the appointment of a receiver, manager or administrator in relation to the Customer's business;
 - (iv) if the Customer becomes bankrupt or enters into a composition or other voluntary arrangements with its creditors;
 - (v) if the Customer agrees to sell or otherwise dispose of its business or any part of it;
 - (vi) if the Customer is removed from any pharmaceutical list, the removal from which would prevent the Customer or its employees from being able to legally dispense prescription drugs or other items;

- (vii) if the Customer becomes unable to pay its debts or satisfy its creditors; and/or
- (viii) if any order for voluntary or involuntary liquidation is made in relation to the Customer or any of the Customers directors;
- (ix) if the Company acting reasonably considers that any of the above matters (i) to (viii) are likely to occur.

3.5 The Customer shall immediately notify the Company on the occurrence of any event(s) set out in Condition 3.4 and the Customer hereby grants an irrevocable licence to the Company and/or its agents to enter the Customer's premises immediately upon it becoming aware of any of the occurrences set out in Condition 3.4 above for the purpose of taking possession of Goods constituting the Company's property.

4. Ordering

4.1 A quotation given by the Company shall not constitute an offer. An Order placed by the Customer shall constitute an offer which shall be deemed to have been accepted by the Company and a Contract formed at the point of despatch of the Goods to the Customer by the Company.

4.2 Any Order shall be accepted by the Company at its sole discretion and the Company reserves the absolute right to reject all or part of any Order placed by the Customer without being under any obligation to provide to the Customer a reason for such a decision.

4.3 Notwithstanding that a Contract may not have been formed, the Customer acknowledges that the Company may incur costs and expenses in the course of processing an Order. As such, if an Order, having been placed, is cancelled at any time the Customer hereby agrees to indemnify the Company in full for any and all losses, costs, damages, charges, expenses and/or lost profits that the Company may suffer as a result of such cancellation.

4.4 Should a Customer who places an Order with the Company be an existing Phoenix Healthcare Distribution Limited (PHD) Customer at the time the Order is placed, then purchases from Nupharm Direct will count towards the Customers overall PHD spend as 'non qualifying'.

5. Acceptance & Delivery

5.1 Both parties expressly agree that the Company at it's sole discretion may deliver the Goods to the Customer using a courier, post or by any Associated Business of the Company including but not limited to Phoenix Healthcare Distribution Limited.

5.2 Unless expressly agreed by the Company, delivery of each Order placed will be made to the Customer's normal place of business (as communicated to the Company by the Customer) during Normal Business Hours.

5.3 Any dates and/or times specified for delivery are intended to be an estimate only and time shall not be deemed to be of the essence.

5.4 The Company reserves the right to deliver all or any part of the Goods in instalments at its sole discretion.

5.5 On delivery of the Goods to the Customer, the Goods shall be held at the Customer's sole risk and the Customer warrants that they will insure such Goods to their full market value against all risks of loss or damage to the Goods.

- 5.6 The Customer agrees to provide adequate and safe access to the Customer's property whilst the Company's employees and that of its Associated Businesses, their agents and sub contractors who are visiting the Customer's property and the Customer warrants that they have fully complied and will continue to fully comply with any and all statutory obligations that they have towards all such visitors.
- 5.7 If the Customer for any reason fails or is unable to accept delivery of Goods in accordance with these terms and conditions, the Goods will have deemed to have been delivered (with the risk in them passing to the Customer) and the Company may invoice the Customer and the Company may:
- (i) store the Goods at the Customer's risk and cost and redeliver at the next reasonable opportunity; and/or
 - (ii) after a reasonable period cancel the Order and sell the Goods at the best price that the Company can obtain and after deducting all reasonable storage and selling costs pay to the Customer any excess profit made over the Contract price or charge the Customer for any shortfall below the Contract price.
- 5.8 The signature on the delivery note or electronic hand held device by any person at the delivery address will be evidence that the Customer has accepted the delivery of the Goods.
- 5.9 Any shortages or errors in or damage to or non-delivery of any Order must be notified to the Company within 3 days of the date of delivery.
- 5.10 The Customer agrees to promptly return all tote boxes and other returnable containers to the Company. If these are retained by the Customer for longer than ten calendar days after the date of delivery, the Customer shall be liable to be charged for the replacement cost of such containers.

6. Returns

- 6.1 The Company does not accept the return of any Goods whatsoever unless such Goods are proven to be damaged or are faulty immediately on receipt and that the Customer has complied with Clause 5.9 above.
- 6.2 The Customer fully accepts that any Goods specially manufactured or that require cold chain storage and are ordered in error by the Customer are unable to be returned to the Company under any circumstances.

7. Liability

- 7.1 The Company is not liable to the Customer for:
- (i) non-delivery;
 - (ii) shortages in or excesses of quantity delivered;
 - (iii) damage to or loss of the Goods or any part of them in transit (where the Goods are carried by the Customer's own transport or by a carrier on behalf of the Company);
 - (iv) defects in the Goods caused by fair wear and tear, abnormal or unsuitable conditions of storage or use or any act, neglect or default of the Customer or of any third party; or

(v) other defects in the Goods;

unless notified to the Company in accordance with the provisions of Condition 5.9.

7.2 If liability is accepted by the Company under Condition 7.1 the Company's only obligation is at its option:

- (i) to make good any shortage or non-delivery;
- (ii) to replace or repair any Goods found to be damaged or defective; or
- (iii) to refund to the Customer the amount paid by the Customer for the Goods.

7.3 The Company is not liable for any loss, damage or liability of any kind suffered by any third party directly or indirectly caused by any alterations to the Goods (including alterations to the packaging contrary to the Company's or the manufacturer's instructions) carried out without the Company's prior written approval.

7.4 The Company's aggregate liability to the Customer under a Contract whether for negligence, breach of contract, breach of statutory duty, misrepresentation, restitution or otherwise shall in no circumstance exceed the cost of the defective, damaged or undelivered Goods which give rise to such liability as determined by the net price invoiced to the Customer in respect of any occurrence or series of occurrences.

7.5 All conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are excluded from each Contract to the fullest extent permitted by law.

7.6 Nothing in these terms and conditions excludes or limits the Company's liability:

- (i) for death or personal injury caused by the Company's negligence;
- (ii) under Section 2(3) of the Consumer Protection Act 1987;
- (iii) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability;
- (iv) for fraud or fraudulent misrepresentation.

7.7 The Company is not liable for any direct, indirect, special or consequential liabilities, losses, charges, damages, costs and expenses suffered by the Customer howsoever caused and including, without limitation, pure economic loss, loss of anticipated profits, goodwill, revenue, reputation, anticipated savings, management time, business receipts or contracts or losses or expenses resulting from third party claims.

8. Pricing & Payments

8.1 It is expressly agreed by the parties that the Goods may be invoiced by Phoenix Healthcare Distribution Limited (PHD) or other Associated Business and such Goods will be shown separately on the monthly statement from other Goods ordered from PHD.

8.2 The price of Goods excludes VAT which, where applicable, will be added to the price at the appropriate rate in force at the date the Order is placed.

8.3 The Company will make every reasonable effort to maintain competitive pricing and discounts however the Company reserves the right to alter such prices and discounts at any time before Goods are delivered upon giving prior notice to the Customer.

- 8.4 The price for the Goods shall include all costs of deliveries and collections made in accordance with these terms and conditions where delivery is made by the Company's own vehicles. A separate reasonable charge may be made where delivery is made by the Company's nominated carrier. The Company reserves the right to make an additional charge, statutory charge or fuel surcharge as it sees fit to cover any changes in its cost structures.
- 8.5 Invoices for Goods supplied by the Company will be submitted to the Customer weekly, payment for all Goods provided by the Company is due by the last working day of the month following the invoice date. Any payment that is due from the Customer that is overdue by 7 calendar days or more will attract interest at 8% above the base lending rate of Barclays Bank Plc accruing on a daily basis from the first day that any such payments were due.
- 8.6 In addition to the interest referred to in Condition 8.5 continuing to accrue, the Customer will also forfeit any and all discounts that the Company has agreed to provide in the course of trading. In addition the Company and its Associated Companies may:
- (i) reduce or cancel any discounts that may be available in the future; and/or
 - (ii) require suitable security for any and/or all future deliveries
- 8.7 The Customer shall pay the full amount shown on the invoice due without making any deductions or offsets for any reason whatsoever unless previously agreed and authorised by the Company. Agreed settlement discounts may be deducted but on the strict understanding that this is only allowed if payment is made by the date on which payment is due.
- 8.8 The Company reserves the right to charge the Customer for the supply of any duplicate documentation requested by the Customer.
- 8.9 The Customer agrees that amounts that may be due to the Customer by the Company or its Associated Companies may be offset against amounts owed by the Customer to the Company or any of its Associated Companies.
- 8.10 Both parties agree that The Customer will be invoiced for products supplied by Nupharm Direct by Phoenix Healthcare Distribution Limited (PHD) on their usual monthly statement and payment should be made to PHD in accordance with this Clause 8.

9. Product Recalls

- 9.1 The Customer agrees to provide the Company with all necessary assistance in the event of a product recall. The Company agrees to be responsible for the collection of Goods subject to such a recall and the Customer agrees that their account will only be credited after credit for such Goods has been received by the Company from the relevant supplier.

10. Force Majeure

- 10.1 Should the Company be prevented from performing any of its obligations under these terms and conditions for any reason whatsoever that is beyond its reasonable control ("an Event of Force Majeure"), it shall be under no obligation or liability to the Customer in respect of any such non performance and it shall be entitled, at its option, to amend, delay or terminate any Order affected by such Event of Force Majeure.

11. Termination

- 11.1 On or at any time after the occurrence of any of the events in Condition 11.2, the Company may:
- (i) stop and/or recall any Goods in transit;
 - (ii) suspend further deliveries to the Customer;
 - (iii) exercise its rights under Condition 3; and/or
 - (iv) terminate any Contract with the Customer with immediate effect by written notice to the Customer.
- 11.2 The events are:
- (i) the Customer being in breach of any obligation under a Contract with the Company or breach of these Terms & Conditions;
 - (ii) the Customer passing a resolution for its winding up or a court of competent jurisdiction making an order for the Customer's winding up or dissolution;
 - (iii) the making of an administrative order in relation to the Customer or the appointment of a receiver over, or an encumbrancer taking possession of or selling, an asset of the Customer; or
 - (iii) the Customer making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.
 - (iv) If any payment is overdue by 10 calendar days after the date that payment is due to the Company
- 11.3 Upon termination of a Contract pursuant to this Condition 11, any indebtedness of the Customer to the Company becomes immediately due and payable and the Company is relieved of any further obligation to supply Goods to the Customer pursuant to any Contract.

12. General

- 12.1 Any intellectual property rights created or developed by the Company in the course of the performance of any Contract shall remain the sole property of the Company and nothing in these terms and conditions shall be deemed or interpreted to give the Customer a licence or any other right to use any of the intellectual property rights of the Company.
- 12.2 Any rights and remedies of the Company arising under any Contract shall not be diminished waived or extinguished by any indulgence forbearance extension of time for any period by the Company nor by any failure or delay by the Company in exercising any such rights or remedies.
- 12.3 The Customer shall not be entitled to assign, charge, subcontract or transfer any Contract or any part of any Contract without the prior written consent of the Company. The Company may assign, charge, subcontract any Contract or any part of any Contract at its sole discretion.
- 12.4 The information that is provided by the Customer will be used by the Company for the purpose of managing the Customer's account. The Customer consents to all such

information and all ordering data being used by the Company and consents to allow such information being passed onto third parties.

- 12.5 The Parties agree that, in the event that if one or more of the provisions of these Terms & Conditions is found to be unlawful, invalid or otherwise unenforceable, that those provisions shall be deemed severed from the remainder of these Terms & Conditions and the conditions redrawn. The remainder of these Terms & Conditions shall be valid and enforceable

13. Law & Jurisdiction

- 13.1 If any Clause is held to be invalid or unenforceable whether wholly or partially for any reason, such Condition shall be deemed severable to the extent that such invalidity requires it and the other Conditions shall not be affected.
- 13.2 The waiver by either party of any breach of a Contract shall not prevent the subsequent enforcement of that breach. No waiver of these terms and conditions shall be effective unless written and signed and agreed by both parties.
- 13.3 The construction validity and performance of these terms and conditions shall be governed by English law and subject to the exclusive jurisdiction of the English courts.
- 13.4 No person who is not a party to any Contract or these terms and conditions is entitled to enforce any of its terms whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. Anti Corruption and Bribery Act

- 14.1 It is a corporate policy of both parties to comply with all laws and regulatory requirements affecting its business including anti-corruption and anti-bribery laws within the United Kingdom.
- 14.2 Both parties shall:
- 14.2.1 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**") that are applicable within the United Kingdom;
- 14.2.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 14.2.3 have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;
- 14.2.4 promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of this Agreement;

14.2.5 immediately notify the other party (in writing) if a foreign public official becomes an officer or employee of that party or acquires a direct or indirect interest in that party (and both parties warrant that it has no foreign public officials as officers, employees or direct or indirect owners at the date of this Agreement);

14.3 Both parties shall ensure that any person associated with that party who are performing services in connection with these Terms & Conditions does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the parties in this clause 14.

14.4 Breach of this clause shall be deemed a material breach of these Terms & Conditions which is incapable of remedy and in the event of such a breach a party so affected shall have the right to immediately terminate this Agreement.

14.5 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.