

Standard Terms and Conditions of Sale – effective from 1 September 2016

1. Standard terms and conditions of sale

These terms and conditions (**Conditions**) apply to the sale of products (**Products**) by Mayne Pharma International Pty Ltd ABN 88 007 870 984 (**Mayne Pharma or Supplier**) to the customer (**Purchaser**). These Conditions prevail over any terms in any document of the Purchaser and contain the entire agreement between the parties, unless the parties expressly agree in writing otherwise. Mayne Pharma may change its Conditions from time to time at its discretion and they will be available to view on Mayne Pharma's website. These new Conditions will apply to any order received by Mayne Pharma after the date they are posted on its website.

2. On sell of Products

2.1 The Purchaser may only on sell Products to customers in Australia and must only do so in accordance with all laws and regulations applying to the sale and distribution of such Products in Australia.

2.2 Any Product sold by the Supplier, which is resold, must be in the original packaging.

3. Orders and delivery

3.1 Orders received are subject to acceptance by the Supplier in writing or by performance.

- (a) An order must:
 - (i) be in writing, specifying the quantity, pack sizes and varieties of Products required by the Purchaser;
 - (ii) be in multiples of any minimum order quantity and exceed any minimum order value as notified by the Supplier;
 - (iii) state the name and address of the Purchaser for shipping and invoicing purposes; and
 - (iv) include a purchase order number assigned by the Purchaser.
- (b) Supplier will endeavour to deliver the Products within its standard delivery lead times for such Products (available on request) or otherwise as requested by Purchaser and agreed in writing by Supplier.
- (c) Any delivery time the Supplier gives to, or agrees with, the Purchaser is only an estimate and the Supplier is not liable to the Purchaser for any loss or damage

(including consequential loss or damage) arising from late delivery.

- (d) If a Product is temporarily out of stock, it will be placed on backorder unless the Purchaser expressly requests otherwise.
- (e) The Supplier reserves the right to accept or decline, in whole or in part, any order.

4. Risk and title

4.1 Risk

Risk in the Products passes to the Purchaser immediately on delivery to the Purchaser at the location specified in an order.

4.2 Title

Subject to condition 5.2, title to the Products passes to the Purchaser immediately on the Supplier receiving full payment for the Products in cleared funds. Until title passes to the Purchaser under this condition 4.2:

- (a) ownership of the Products remains with the Supplier;
- (b) the Purchaser holds the Products as bailee and fiduciary for the Supplier and the Purchaser is responsible for any loss or damage to the Products (and must insure the Products against loss or damage);
- (c) the Purchaser must store the Products such that they can be readily located if required;
- (d) if the Supplier does not receive full payment when due it may, acting reasonably, retake possession of the Product and for this purpose enter into any premises the Purchaser occupies or controls; and
- (e) if the Purchaser sells or purports to sell the Products, then the Purchaser does so as a fiduciary of the Supplier and the proceeds of such sale are the property of the Supplier to the extent of any money owed to it by the Purchaser and the Purchaser must account to the Supplier in respect of such proceeds of sale.

5. Order acceptance

5.1 Review of orders and returns

The Purchaser must, within 48 hours of taking delivery of Products under an order, notify the Supplier in writing if:

- (a) any Products delivered are:
 - (i) materially damaged;
 - (ii) defective and unsuitable for use by the Purchaser;

- (iii) have an unreasonably short shelf life, giving reasonable particulars of the claim, including photographic evidence where it is likely to assist the Supplier in its review. If the Supplier is satisfied with the Purchaser's submission, the Supplier will make further deliveries of Products to the Purchaser to replace the relevant Products and the Supplier's Warehouse and Customer Service Manager (or delegate) may arrange or authorise the return of the relevant Products;
- (b) the quantity of Products delivered exceeds the quantity requested in an order, in which case the Supplier will, at the Supplier's cost, collect the excess Products from the Purchaser; or
- (c) the quantity delivered to the Purchaser is less than the quantity requested in an order, in which case the Purchaser will retain the Products already delivered and the Supplier will make further deliveries of Products to meet the shortfall.

5.2 Excess Products

In the case of delivery of excess Products under condition 5.1(b), the Supplier retains title to the excess Products. The Purchaser must notify the Supplier of such excess Products and is responsible for their storage until the Supplier collects the excess Products, provided the Supplier collects the excess Products promptly after notification.

5.3 Returns

Notwithstanding any other condition (except any as referred to in condition 11.2) returns will not be accepted if the Products are incomplete, used or were delivered more than 48 hours prior to the request for return.

6. Pricing and GST

- 6.1 Unless otherwise agreed in writing, all orders will be subject to the Supplier's price list applicable at the date the Supplier enters the order into its order system.
- 6.2 The Supplier's price list is subject to change without notice to the Purchaser, but is available on request.
- 6.3 Prices are exclusive of GST. The Purchaser must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply of the Products under these Conditions. The Purchaser must pay the GST at the same time as the Purchaser pays the Product price.
- 6.4 Prices are inclusive of standard packing for delivery within Australia and insurance costs, subject to

orders for less than \$500 where a \$75 delivery fee is payable by the Purchaser.

7. Payment and invoicing

7.1 Invoices

The Supplier will issue the Purchaser with a tax invoice when the Purchaser's order is processed.

7.2 Obligation to pay

The Purchaser will pay each invoice in full and without set-off or deduction within 30 days of the date of receipt of the invoice.

7.3 Interest

The Purchaser must pay the Supplier interest at the Reserve Bank Official Cash Rate on any overdue amounts. Interest is calculated from the due date for payment of the invoice and compounded daily.

8. Intellectual property

- 8.1 The Purchaser is not permitted, unless express written consent is granted, to use any trademark, logo or other intellectual property of the Supplier.
- 8.2 These Conditions do not transfer any intellectual property rights of either party.

9. Instructions for use

All Products are sold on the condition that the Purchaser strictly follows any applicable regulations, pack inserts and Supplier/Manufacturer instructions, including in respect to storage, handling and use.

10. Confidential Information

- 10.1 Subject to condition 10.2, both parties agree to keep confidential information disclosed by the other party confidential and secure at all times and to only use it for purposes contemplated by these Conditions. Confidential information of Supplier includes, but is not limited to, any disclosed pricing or price lists, product specifications and market research but excludes information that becomes public knowledge.

- 10.2 A party may disclose confidential information with the prior written agreement of the other party or to the extent required by law or the rules of a securities exchange.

11. Warranties

- 11.1 Each party represents and warrants to the other that it has full corporate and lawful authority and the legal power to agree to these Conditions and to perform or cause to be performed its obligations under these Conditions.
- 11.2 To the extent that Purchaser acquires goods or services from Supplier as a consumer within the meaning of the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*), Purchaser may have certain rights and

remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement. Nothing contained in these Conditions shall exclude or modify the application of any condition, warranty or liability or the imposition of any liability under the Australian Consumer Law or any other relevant legislation, where to do so would contravene that legislation or cause any term of these Conditions to be void.

11.3 To the extent permitted by law, all other warranties that may be implied by custom, under the general law or by statute are expressly excluded from these Conditions.

12. Limitation of liability

Subject to condition 11.2:

- (a) the Supplier's liability for any defect in the Products or their supply (including any breach of warranty) is limited, at the Supplier's option, to repairing or replacing the Products (or supplying equivalent Products) or paying the cost of repairing or replacing the Products or supplying equivalent products together with any costs for which it is liable under condition 14.2(a);
- (b) the Supplier will not in any circumstances be liable for any consequential, special or indirect loss or damage or for any loss of contract, profit, savings, reputation or goodwill; and
- (c) the Supplier's total aggregate liability to the Purchaser under or in any way connected with these Conditions is limited to an amount not exceeding the total amounts paid by Purchaser to the Supplier at the time the event giving rise to that liability occurred.

13. Indemnity

The Purchaser indemnifies the Supplier against all damages awarded or incurred by the Supplier (directly or indirectly) because of the Purchaser's distribution of the Products, save to the extent the damages are caused by any negligent, wilful, reckless or unlawful act or omission of the Supplier, but only to the extent that the act, omission or breach directly results in the damages being suffered.

14. Product recall

14.1 Assistance

The Purchaser will cooperate and comply with any reasonable directions in respect to a Product suspension or recall. To the extent that the Supplier is entitled to recover the costs of the suspension or

recall from the relevant Product manufacturer or supplier, the Supplier will reimburse to the Purchaser any reasonable and necessary costs incurred by the Purchaser in connection with the suspension or recall.

14.2 Cost of recall

If a Product recall is due to the Supplier's fault or negligence, the Supplier will:

- (a) bear its own and any direct third party costs of implementing the recall; and
- (b) replace, or refund the cost price of, the recalled Products to the Purchaser.

15. Cancellation and termination

15.1 The Purchaser may not cancel any order once lodged unless the Supplier, in its absolute discretion, agrees otherwise.

15.2 Supplier may cancel any order and terminate these Conditions if:

- (a) any invoice due is unpaid;
 - (b) the Purchaser becomes insolvent or the Supplier obtains an unfavourable credit report on the Purchaser's financial standing,
- in which case, the Purchaser must indemnify the Supplier for any costs and expenses incurred prior to, and in respect of, the cancellation. In these circumstances, the Supplier may require the Purchaser to provide prepayments or other security as a condition of the Supplier resuming supply.

16. Dispute resolution

16.1 Parties must follow dispute resolution procedure

In the event of a dispute arising between the parties in connection with or arising out of these Conditions, no party may commence arbitration or court proceedings, except proceedings seeking urgent interlocutory relief, unless it has first given written notice of the same to the other party and thereafter complied with this condition 16.

16.2 Nomination of a responsible executive

Within 10 days after a notice is given under this condition 16, each party must nominate in writing to the other party a responsible executive authorised to meet and to resolve the dispute.

16.3 Best efforts to resolve the dispute

For 30 days after a notice is given under this condition 16 (or if the parties agree in writing, a longer period), each party through its nominated responsible executive must use its reasonable commercial efforts to resolve the dispute and, if the parties agree that the dispute is not able to be resolved within that time, to agree in writing on the

most appropriate dispute resolution mechanism to resolve the dispute.

16.4 Failure to resolve the dispute

If a dispute is not resolved within the time referred to in the preceding condition 16, and in default of any agreement on a dispute resolution mechanism, the parties may commence court proceedings.

16.5 Costs

Each party must pay its own costs of complying with this condition 16.

17. Force Majeure

The Supplier is not liable for any failure by the Supplier to comply with these Conditions if the failure directly or indirectly arises out of any circumstances which are not within the Supplier's reasonable control, including an act of war, terrorism, natural disaster, machinery breakdown, industrial action, transportation shortage or failure by a supplier, public utility or common carrier.

18. Anti-corruption Laws

Without limitation, each party represents that it is now in compliance with and will at all times remain in compliance with all applicable law and regulations relating to anti-corruption in Australia, including the *Australian Criminal Code Act 1995* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and related regulations, and any other applicable anti-corruption laws prohibiting bribery or other forms of corruption, including money laundering, within the public and private sectors.

19. Personal Properties Securities Act (PPSA)

19.1 The parties agree that by virtue of condition 4.2 the Supplier has a security interest in the Products for the purposes of the PPSA to secure payment and to the extent applicable the PPSA applies.

19.2 The Supplier may do anything reasonably necessary to perfect the security interest and comply with the requirements of the PPSA and the Purchaser agrees to do all things reasonably necessary to assist with this.

19.3 The Supplier and Purchaser agree that, pursuant to section 115 of the PPSA the following sections do not apply – section 129 (disposal by purchase); section 130 (notice of disposal) to the extent that it requires the secured party to give a notice to the grantor before disposal; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); section 142 (redemption of collateral); section 143 (reinstatement of security agreement).

20. Supply arrangement with wholesaler

Notwithstanding anything else in this agreement, if the parties agree that a supply otherwise governed by this agreement is to occur via a wholesaler then the parties agree that:

- (a) the following conditions of this agreement will no longer apply in respect to that supply: conditions 3 (Order and delivery), 4 (Risk and title), 5 (Order acceptance), 6 (Pricing and GST - subject to below), 7 (Payment and invoicing) and 19 (Personal Properties Securities Act); and
- (b) the supply price will be the contracted price the parties have agreed pursuant to this agreement, unless the wholesaler has title to the Products immediately prior to passing title to the Purchaser, in which case the contracted price is to be treated as a maximum price only and the wholesaler is free to offer to sell the Products to the Purchaser at a lower price in accordance with the *Australian Competition and Consumer Act 2010*.

21. General

21.1 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

21.2 Alteration

These Conditions may be altered only in writing signed by each party.

21.3 Waiver

A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

21.4 Assignment

Purchaser may only assign these Conditions or a right under these Conditions with the prior written consent of the Supplier, not to be unreasonably withheld.

21.5 Survival

Any indemnity or any obligation of confidence under these Conditions is independent and survives termination or expiry of these Conditions. Any other term by its nature intended to survive termination or expiry of these Conditions survives termination or expiry of these Conditions.

21.6 Severability

A provision or part of a provision of these Conditions that is illegal or unenforceable may be

severed from these Conditions and the remaining provisions or parts of the provisions of these Conditions continue in force.

21.7 Relationship

Except where these Conditions expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

21.8 Governing law and jurisdiction

These Conditions are governed by the law of South Australia and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of South Australia.