

[Company Name and Address]

Terms and Conditions of Purchase
for purchase from outside the UK

1. **Interpretation**

1.1 In these Conditions the following expressions have the following meaning (unless the context requires otherwise):

“**Business Day**” means any day other than a Saturday or Sunday or a public or bank holiday in England;

“**Buyer**” means Cardinal Health U.K. 101 Limited, a company registered in England under number 01783390 and whose registered office is at Windsor House, Cornwall Road, Harrogate, North Yorkshire, HG1 2PW, trading as Intercare Pharmaceutical Distribution from Downlands Business Park, Lyons Way, Worthing, BN14 9LA;

“**Conditions**” means these standard terms and conditions of purchase together with any special terms agreed in writing between the Seller and the Buyer;

“**Contract**” means any contract between the Seller and the Buyer for sale and purchase of the Goods;

“**Good Distribution Practice**” means those standards of the wholesale distribution of medicinal products laid down by Directive 2001/83/EC as may be as amended from time to time;

“**Goods**” means the goods or (if applicable) any instalment or part of them, agreed to be supplied by the Seller to the Buyer under a Contract;

“**Order**” means any purchase order of the Buyer for Goods incorporating these Conditions;

“**person**” means any individual, firm, body corporate, unincorporated associated, partnership or joint venture;

“**Seller**” means the company supplying the Goods to the Buyer and named on the delivery note for the sale of the Goods.

1.2 In these Conditions masculine includes the feminine and the neuter, and the singular includes the plural and vice versa (unless the context requires otherwise).

1.3 Headings in these Conditions are for convenience only and will not affect its construction or interpretation.

2. **Formation of Contracts**

2.1 [Subject to any variation under clause 19.2, each quotation for the Goods from the Seller shall constitute an offer by the Seller to sell the Goods upon these Conditions.

2.2 A Contract will be formed either by oral acceptance of a quotation, followed by subsequent written confirmation or when a written acceptance of a quotation is served by the Buyer on the Seller. Such which written confirmation or acceptance (as the case may be) will document any terms agreed under clause 9.2 which will become part of the Contract. No contract will exist prior to service of such notice of acceptance.]

OR

2.1 [Subject to any variation under clause 19.2, each Order for Goods will be accepted by the Seller by returning the Buyer’s standard acknowledgment of order form. Such

- acknowledgment of order form will document any terms agreed under clause 9.2 which will become part of the Contract.
- 2.2 A Contract is only formed when the Seller has served the Buyer's standard acknowledgment of order form on the Buyer. No Contract will exist prior to service of such acknowledgement of order form.] [*delete as appropriate*]
- 2.3 The Seller may not cancel the Contract.
3. **Orders**
- 3.1 The Buyer shall not be liable for any inaccuracies in the provisions of any Order made by it or in any of its applicable specifications.
- 3.2 The Seller acknowledges that precise conformity of the Goods with the Contract is of the essence of the Contract and the Buyer will be entitled to reject the Goods or terminate the Contract under clause 17.1.1 if the Goods are not in conformity with the Order or the Contract. Any breach of this condition is deemed a material breach which is not capable of remedy under clause 17.1.1.
- 3.3 The Buyer may :
- 3.3.1 up to 5 Business Days after the date of making any Order, decrease the quantity specified in that Order; and/or
- 3.3.2 at any time, increase the quantity specified in that Order.
- If any changes under this clause 3.3 results in an increase in the cost of, or time required for, performance of the Contract, an equitable adjustment will be made to the price, delivery time or both. Any such adjustment must be approved by the Buyer's authorised representative before the Seller proceeds with such changes.
4. **Price**
- 4.1 All quotations provided by the Seller will remain open for 30 days from their respective dates.
- 4.2 Subject to any variation under clause 19.2, the price payable will be the price stated in the [Order][quotation][*delete as appropriate*] and, unless otherwise stated in that [Order] [quotation][*delete as appropriate*], will be:
- 4.2.1 inclusive of packaging material, packing and any duties, imposts, levies or taxes including, without limitation, value added tax ("VAT") chargeable at the current rate; and
- 4.2.2 fixed for the duration of the Contract.
5. **Delivery/Carriage**
- 5.1 Subject to any variation under clause 19.2, delivery shall occur at ex works the Seller's premises (EXW, Incoterms 2000) during the Seller's normal office hours within 30 days of the date of the Contract's formation. The Seller will notify the Buyer 5 Business Days in advance of the date of delivery.
- 5.2 Time of delivery is of the essence.
- 5.3 Without prejudice to the Buyer's other rights, powers or remedies (whether express or implied) under the Contract, if the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer will not be bound to pay for the excess and such excess will be and remain at the Seller's risk and be returnable at the Seller's expense.
- 5.4 The Seller will ensure that:

- 5.4.1 the Goods are marked in accordance with the Buyer's oral or written instructions or both (if any) and are properly packaged and loaded onto the carrier so as to reach their destination in an undamaged condition;
- 5.4.2 each delivery is accompanied by a delivery note which shows, inter alia, the name of the Seller, order number, date of order, number of packages and contents;
- 5.4.3 the Buyer is supplied on delivery with all necessary written instructions as to proper storage, maintenance and handling of the Goods.
- 5.5 Notwithstanding any other provision of these Conditions, the Seller will be liable to:
 - 5.5.1 the Buyer for any loss or damage to the Goods or any part of them prior to delivery or for any claim in respect of the delivery of defective Goods or where Goods are not in accordance with the Order or Contract; and
 - 5.5.2 accept the return of such affected Goods (at the Seller's expense) and (at the Buyer's discretion) replace such affected Goods and remain liable for any loss, damage, non-compliance or defect of any replacement Goods or refund to the Buyer the full price paid for those affected Goods at the time of delivery (making allowance for any currency fluctuations).
- 5.6 Notwithstanding clause 19.1 and any terms and conditions of the Seller on any acknowledgement or confirmation of Order, quotation, delivery note, invoice or similar document, delivery of goods will be deemed conclusive evidence of the Seller's acceptance of these Conditions.
- 5.7 The Buyer will not be deemed to have accepted the Goods until it has had 3 days to inspect them following delivery.
- 5.8 Notwithstanding clause 6.1, if for any reason the Buyer will not or cannot accept delivery of any Goods when such Goods are available for delivery:
 - 5.8.1 the Goods will not be deemed as delivered; and
 - 5.8.2 risk shall not pass to the Buyer
- 5.9 The Buyer may at any time decide that delivery of Goods will be made by instalments.
- 5.10 Notwithstanding any other provision in these Conditions, each delivery of instalments under clause 5.9 will be construed as a separate Contract.

6. **Risk and Ownership**

- 6.1 Risk in and ownership of the Goods will pass to the Buyer on delivery.

7. **Defective Goods**

- 7.1 Without prejudice to the Buyer's other rights, powers or remedies under the Contract (whether express or implied), the Seller will accept the return of any Goods in which a defect appears during its normal shelf life and (at the Buyer's discretion) refund to the Buyer the full price paid at the time of delivery (making allowance for any relevant currency fluctuations) for such defective Goods.
- 7.2 The Buyer shall inform the Seller as soon as reasonably practicable when such defect appears and shall on the Seller's written request return the defective Goods or defective part of them (at the Seller's expense) to the Seller's Premises.

8. **Recall**

8.1 The Buyer will use its reasonable endeavours to comply with reasonable requests regarding the recall of any Goods initiated by the Seller on behalf of the holder of a marketing authorisation or product licence.

9. **Payment**

9.1 The Seller may invoice the Buyer for the Goods within 90 days of delivery. Each invoice must be a proper VAT invoice and quote the number of the Order. Unless otherwise agreed in writing, payment is due in sterling within 30 days of receipt by the Buyer of such invoice.

9.2 Notwithstanding clauses 19.1 and 19.2, certain payment and other terms may be agreed individually with the Seller when the Contract is formed and will be recorded in writing at that time as described under clause 2.

9.3 The Seller is not entitled to suspend deliveries of the Goods as a result of any sums due to it under this Contract (including, without limitation, any invoice) being outstanding.

9.4 Without prejudice to any other rights, powers or remedies of the Buyer (whether express or implied), the Buyer will be entitled, but not obliged at any time or times without notice to the Seller to set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller however that liability arose and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency.

10. **Liability**

10.1 The Buyer's aggregate liability under this Contract (whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise) for any direct loss howsoever caused shall be limited to sums actually paid for the Goods under this Contract.

10.2 The Buyer does not exclude its liability (if any) to the Seller:

10.2.1 for personal injury or death resulting from the Buyer's negligence;

10.2.2 for any matter which it would be illegal for the Buyer to exclude or to attempt to exclude its liability; or

10.2.3 for fraud.

11. **Consequential Loss**

11.1 The Buyer shall not be liable for any indirect loss or Consequential Loss. "Consequential Loss" includes, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), costs, expenses or other claims howsoever caused which arise out of or in connection with the Buyer's performance or contemplated performance of this Contract.

12. **Indemnity**

12.1 The Seller will indemnify the Buyer against any loss, damage, costs, expenses, liabilities, injuries, direct, indirect or Consequential Loss (on a full indemnity basis) and any judgements which the Buyer incurs or suffers as a consequence of a direct or indirect breach or negligent performance by the Buyer or failure or delay in performance of the Contract.

13. **Assignment/Sub-contracting**

- 13.1 Subject to any variation under 19.2, the Seller may not assign the benefit or delegate the burden of this Contract or any part of it to any person.
- 13.2 The Buyer may assign the benefit or delegate the burden of this Contract or any part of it to any person.
- 13.3 The Buyer may sub-contract any of its rights and obligations under this Contract.

14. **Force Majeure**

- 14.1 The Buyer will be deemed not to be in breach of the Contract or otherwise be liable to the Seller for any failure or delay or for the consequences of any failure or delay in performance of this Contract if it is due to Force Majeure. **“Force Majeure”** means any act, event, omission or accident beyond its reasonable control including, without limitation, strikes, lockouts or other industrial disputes (whether involving the work force of the Buyer or otherwise), protests, acts of God, fire, flood, storm, tempest, explosion, war, national emergencies, an act of terrorism, riot, civil commotion, malicious damage, breakdown of plant or machinery, epidemic, default of subcontractors, compliance with any law, order, rule, regulation, directive or requirement of any government, or government agency or authority, including unforeseeable acts with respect to export/re-export licences.
- 14.2 If the Buyer’s performance of its obligations under the Contract is affected by Force Majeure:
 - 14.2.1 it will give written notice to the Seller, specifying the nature and extent of the Force Majeure, as soon as reasonably practicable after becoming aware of the Force Majeure and will at all times use all reasonable endeavours to bring the Force Majeure to an end, and whilst the Force Majeure is continuing, mitigate its severity, without being obliged to incur any expenditure;
 - 14.2.2 subject to clause 14.3, the date for performance of the Buyer will be deemed suspended for a period equal to the delay caused by such event; and
 - 14.2.3 it will not be liable to the Seller in respect of any extra costs and expenses incurred by the Seller by virtue of the Force Majeure.
- 14.3 If the Force Majeure in question continues for more than 3 months, either party may give written notice to the other to terminate the Contract. The notice to terminate must specify the termination date, which must not be less than 14 days after the date on which the notice is given, and once such notice has been validly given, the Contract will terminate on that termination date.

15. **Seller’s Warranties**

- 15.1 The Seller warrants, represents and undertakes to the Buyer:
 - 15.1.1 that the Goods 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 Seller or made known to the Seller either in writing or orally or prior to the Contract being formed;
 - 15.1.2 that the Goods will be free from defects in design, material and workmanship;
 - 15.1.3 that the Goods will correspond in every respect with any samples or descriptions provided by the Seller;

15.1.4 that the Goods will comply with all applicable laws and regulations (including, without limitation, those regarding equivalents to UK and/or EU customs and excise, marketing authorisations or product licences, manufacturer's licences, wholesale dealer's licences, Good Distribution Practice, packaging and labelling requirements and Controlled Drugs as defined by the Misuse of Drugs Act 1971 and the Misuse of Drugs Regulations 2001) regarding the exportation, importation and distribution of Goods by any means in any and all territories in which the Seller operates; and

16. Cancellation

16.1 Without prejudice to any other rights, powers or remedies of the Buyer (whether express or implied), if the Seller breaches any terms of the Contract (including, without limitation, a failure or delay in delivery not previously agreed with the Buyer in writing or orally, followed by subsequent written confirmation) or the Buyer terminates the Contract in accordance with clause 17.1 then the Buyer will be entitled, but not obliged, whether or not the Goods have been accepted, to:

16.1.1 cancel any or all remaining instalments if the Contract has not already been terminated;

16.1.2 refuse to accept any subsequent delivery of the Goods which the Seller attempts to make; and/or

16.1.3 for a period of 60 days from the date of delivery accept the return of such affected Goods (at the Seller's expense) and (at the Buyer's discretion) refund to the Buyer the full price paid for such defective Goods at the time of delivery (making allowance for any currency fluctuations).

17. Termination

17.1 The Buyer may by written notice served on the Seller terminate the Contract immediately if the Seller:

17.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Seller fails to remedy such breach within 15 Business Days' service of a written notice from the Buyer, specifying the breach and requiring it to be remedied. Failure to deliver Goods on the due date in accordance with clause 5.1 (as the case may be) is a material breach of the Contract which is not capable of remedy;

17.1.2 becomes bankrupt, insolvent, makes any composition with its creditors, has a receiver appointed under the Mental Health Act 1983 or dies;

17.1.3 has any distraint, execution or other process levied or enforced on any of its property;

17.1.4 ceases to trade or appears in the reasonable opinion of the Buyer likely or is threatening to cease to trade within the time period for delivery specified in clause 5.1;

17.1.5 the equivalent of any of the above occurs to the Seller in another jurisdiction to which the Seller is subject.

17.2 The termination of the Contract howsoever arising is without prejudice to the rights, duties and liabilities of either party accrued prior to termination and the provisions of

these Conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

18. Convention on Contracts for the International Sale of Goods

18.1 The parties agree that the Convention on Contracts for the International Sale of Goods 1980 (“**CISG**”) will apply to the carriage of Goods outside of the UK. To the extent there are any inconsistencies between the CISG and these Conditions, these Conditions shall prevail.

19. General

19.1 Subject to clause 9.2 and any variation under clause 19.2, these Conditions apply to every Contract between the Seller and the Buyer and contain all the terms and conditions which the parties have agreed in relation to the subject matter of such Contracts to the exclusion of all other terms and conditions and all previous oral or written representations, and including any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of Order, quotation, delivery note, invoice or similar document, whether or not such document is referred to in the Contract.

19.2 These Conditions (including any special terms and conditions agreed between the parties) may only be varied or amended in writing and agreed by the Buyer’s authorised representative.

19.3 To the extent there are any inconsistencies between any variation or amendment referred to in clause 19.2 and these Conditions, that variation or amendment shall prevail.

19.4 No failure or delay by the Seller to exercise any right will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right.

19.5 Subject as expressly provided in this Contract, the rights, powers and remedies provided in this Contract are cumulative and not exclusive of any rights, powers and remedies provided by law.

19.6 Any waiver of a breach of, or default under, any provision of this Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Contract.

19.7 The parties to this Contract do not intend any terms of these Conditions to be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

19.8 If in any clause or part of this Contract is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision will, to the extent required, be severed from this Contract and will be ineffective without, as far as is possible, modifying any other clause or part of this Contract and this will not affect any other provisions of this Contract which will remain in full force and effect.

20. Applicable law

20.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Contract will be governed by the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.