

## TERMS AND CONDITIONS

Unless otherwise agreed in writing by Upjohn New Zealand ULC ("Upjohn"), the following are Upjohn's Terms and Conditions of Sale ("Terms and Conditions"). These, together only with any other Terms and Conditions agreed upon in writing between Upjohn and the customer ("the Purchaser") shall apply to all sales of Pharmaceutical products ("Goods") by Upjohn to that Purchaser ("the Contract")

### 1. ORDERS

- 1.1 Upjohn reserves the right to accept or decline, in whole or in part, any order placed by the Purchaser.
- 1.2 An order received from the purchaser is deemed binding from the point of order regardless of confirmation from Upjohn.
- 1.3 Any order the value of which is not greater than \$5,000 ("the minimum order value") may at Upjohn's discretion either be rejected or accepted subject to the payment of the handling fee described in 1.4
- 1.4 The Purchaser will be advised if the value of an order does not exceed the minimum order value. If, after such advice, the Purchaser requests that the order(s) be processed and Upjohn New Zealand accepts the order, a handling fee of \$200 may be charged to the Purchaser. This fee is in addition to any service or other charge that may be raised under clause 4.
- 1.5 Any order, which is not greater than any applicable minimum order as notified by Upjohn to the Purchaser from time to time whether as a general minimum order for that product or for a particular product deal, will be rejected. The Purchaser will be advised if the value of an order does not exceed the applicable minimum order.
- 1.6 If a product is temporarily out of stock, Upjohn will supply such Goods when stocks become available unless the Purchaser specifically instructs otherwise before such Goods are shipped to the Purchaser.
- 1.7 The Purchaser must obtain all necessary licenses and comply with all appropriate New Zealand legislative requirements pertaining to the purchase and sale of product.

### 2. REPORTING OF PURCHASE DATA

- 2.1 For Pharmaceutical products, the Purchaser is required to provide a report, at Upjohn's request, reflecting all sales of the Goods to third

parties (including historical sales data) ("Purchase Data Report") to Upjohn and/or to any third party designated by Upjohn from time to time, such as IMS Health.

- 2.2 Purchase Data Reports are to be provided in a format, and at such intervals, as Upjohn may instruct from time to time.
- 2.3 The information received by Upjohn from the Purchaser will be held in confidence and used solely for the management of Upjohn's trade terms and sales policy in compliance with applicable law.

### 3. RE-DISTRIBUTION AND ONSELLING

- 3.1 The Purchaser must be licensed to directly or indirectly on-sell, transfer or distribute any products to any Reseller.
- 3.2 The Purchaser cannot export Upjohn product without Upjohn's written consent. The Purchaser must not sell, transfer or distribute any of the products to any person that it knows, or has reasonable grounds for believing, will or may export such products out of New Zealand. Any breach of this term and condition will preclude the Purchaser from purchasing any further products from Upjohn, until such time as Upjohn is satisfied, in its sole discretion, that the Purchaser will not further breach this prohibition.

### 4. DELIVERY

- 4.1 Delivery of products will be made to one depot nominated by the Purchaser. If the Purchaser has additional depots, direct shipping will be made to those depots only if the main depot has a minimum trading value of \$100,000 per annum, and each additional depot has a minimum trading value of \$20,000 per annum. A delivery fee will be charged for delivery of products that do not meet the order threshold per depot, in accordance with Upjohn's then ruling rates.
- 4.2 Four orders per month will be delivered road/rail freight free to the Purchaser's nominated delivery point referred to in clause 3(a). Orders in excess of four per month (with the exception of back orders and special product introduction orders) may attract a freight/handling charge of \$200 plus the standard service charge if the order is below the minimum value.

- 4.3 When, at the Purchaser's special request, non-standard delivery services such as express post, road overnight or air freight is used, the difference between ordinary surface transportation charges and the charges for special delivery services may be charged to the Purchaser.
- 4.4 For the purpose of requesting replacement products under clause 7, in the event of any breakage, leakage or damage to individual packages occurring in transit between Upjohn and the Purchaser's receiving area, or short deliveries in consignment, the Purchaser must notify Upjohn within two (2) business days of receipt of the consignment.
- 4.5 Non-receipt of products must be notified within seven (7) days of the date of invoice or advice of despatch, otherwise, where applicable, credit pursuant to clause 6 for the Products cannot be allowed.
- 4.6 Products will be delivered in accordance with the delivery service criteria applicable from time to time. All Delivery Times are exclusive of weekends.
- 4.7 Subject to clauses 4.4, 4.5 and 4.6, and to the full extent allowed by law, Upjohn is not liable to the Purchaser for any loss or damage whatsoever (including any consequential loss) caused directly or indirectly by any delay or failure in delivery. Any delay in delivery does not relieve the Purchaser of its obligation to accept that delivery and any remaining delivery.
- 4.8 The risk in products purchased shall, unless otherwise agreed in writing, pass to the Purchaser upon delivery to the Purchaser or his agent or to a carrier commissioned by the Purchaser
- 6.2 Upjohn may decide to grant the Purchaser credit, but Upjohn is not obliged to do so merely because Upjohn accepts a credit application. If Upjohn allows the Purchaser credit terms, then the Purchaser remains bound by these Terms and Conditions of Sale and the credit terms are subject to any additional conditions that Upjohn may request when considering a credit application. Upjohn may decline the Purchaser credit at any time. If Upjohn declines to give the Purchaser credit, that does not affect the conditions which apply to any Order which the Purchaser then owes payment.
- 6.3 The Purchaser authorises Upjohn, its authorised agents or representatives, to make enquiries as to the credit and financial history and responsibilities of the Purchaser, and/or the directors of the Purchaser, as required by Upjohn from time to time, including obtaining reports from credit reporting agencies.
- 6.4 Any credit terms that Upjohn extends to the Purchaser are granted subject to the essential condition that the Purchaser has made complete and accurate disclosure to Upjohn in the credit application of all material information relevant to Upjohn's decision to extend credit. The Purchaser must keep Upjohn promptly informed of any material adverse change in the Purchaser's financial or business circumstances.
- 6.5 If any amount owed to Upjohn is not paid on the Due Date, then at Upjohn's election all money that the Purchaser owes Upjohn on any account becomes immediately payable despite any previously agreed credit conditions. In that case, Upjohn may also suspend the Purchaser's credit facility, change the Purchaser's payment terms to require cash before delivery, change trading terms or terminate any outstanding orders (including part orders) in its sole discretion.
- 6.6 The Purchaser must pay Upjohn interest at 5% per annum above the rate set by the Reserve Bank of New Zealand Official Cash Rate on any overdue amounts. Interest is calculated from the date of invoice, on outstanding balances up to and including the day of payment or (if that falls on a weekend) up to the next working day. Accruing interest is calculated and compounded daily.
- 6.7 Upjohn reserves the right to terminate the Purchaser's credit facility in the event of non-payment. Such termination shall be without prejudice to any other rights Upjohn may have.
- 6.8 Upjohn may in its absolute discretion and without assigning a reason, terminate the Purchaser's credit facility without notice. Upon such event, all amounts payable for all products sold become due for immediate payment. The payment in full on or before the due date constitutes a default.

## 5. PRICING

- 5.1 Prices are subject to change by Upjohn without notice to the Purchaser.
- 5.2 All orders will be subject to Upjohn's Price ruling at the date of despatch of the order by Upjohn.
- 5.3 No credit will be granted to the Purchaser for stock on hand in the event of a price reduction.
- 5.4 The purchaser is responsible for any tax or Government charge imposed on sale of the products by Upjohn New Zealand and the same will be added to the total invoice price.

## 6. CREDIT

- 6.1 Unless otherwise agreed in writing, payment shall be made on the 20<sup>th</sup> day of the month following invoice ("Due Date"). Failure to make

Purchaser shall not be entitled to any compensation for termination of the credit facility.

6.9 The Purchaser agrees to pay Upjohn all reasonable costs including collection costs, commissions, bank charges and legal charges on a solicitor and client basis, on all monies outstanding on its account should the Purchaser breach any term or condition herein and/or should action be taken by or on behalf of Upjohn to recover the debt or enforce the charge in 6.10. As security for the obligations and liabilities of the Purchaser, the Purchaser hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all Real Property. The Purchaser consents unconditionally to Upjohn lodging a caveat or caveats noting its interest in any Real Property.

6.10 Without limiting the generality of the charge in clause 6.9 the Purchaser agrees, on request by Upjohn, to execute any documents and do all things reasonably required by Upjohn to register a mortgage security over any Real Property. In the event that the Purchaser fails to deliver the requested documents, the Purchaser hereby appoints Upjohn to be the Purchaser's lawful attorney for the purposes of executing and registering such documents. The Purchaser indemnifies Upjohn on an indemnity basis against all costs and expenses incurred by Upjohn in connection with the preparation and registration of any such mortgage documents.

6.11 The Purchaser acknowledges and agrees that if the Purchaser has an order subject to other terms and conditions with Upjohn then a default or breach of those terms and conditions (however described) will constitute a default under these Terms and Conditions of Sale and it entitles Upjohn to exercise its rights and remedies under any one or all terms and conditions of sale.

## 7. RETURNS

7.1 The terms of clause 7 shall apply wherever the Consumer Guarantees Act 1993 does not apply to the Contract, or where the terms are not inconsistent with that Act. Products will not be accepted for return unless accompanied by a duly authorised Upjohn Return Material Authorisation number.

7.2 Subject to conditions outlined herein, products will be accepted for return and replacement if they fall into the following categories.

7.2.1 Products that Upjohn is satisfied were damaged in transit between the warehouse and the premises of the Purchaser. In such instances, the Purchaser must notify Upjohn no later than two (2) business days after receipt of delivery. Purchasers should also indicate on the carrier's consignment docket that products are "damaged" or "subject to check" or no claim will be granted.

7.2.2 Incorrect supply, that is, wrong product, not sent in accordance with the Purchaser's order.

7.2.3 Products that Upjohn is satisfied are faulty in materials or workmanship.

7.3 Without limiting the other provisions of Clause 7, the following products will not be accepted for return and no credit will be granted, or monies paid to the Purchaser in respect of these products:

7.3.1 Products sold on a non-return basis.

7.3.2 Products having a broken seal, label removed or other label / price tag attached.

7.3.3 Products that have exceeded their expiry date.

7.3.4 Discontinued products.

7.3.5 Damaged products, except as specified in 7.2 above.

7.3.6 Products that were not ordered by the Purchaser. For the avoidance of doubt, batch tracking of orders is in place. Upjohn products ordered by the Purchaser from another source cannot be returned for credit by Upjohn. If products are incorrectly returned for credit, they will not be returned to the Purchaser unless by special arrangement and at the Purchaser's cost and risk.

7.4 Products accepted by Upjohn for return will be replaced by Upjohn with equivalent products.

7.5 Upon receipt of notification, Upjohn will, within 14 days, collect the product to be returned, from the original place of delivery.

## 8. GENERAL

8.1 To the extent permitted by Law, Upjohn will not be liable for delay, loss or damage (including consequential loss) due to scarcity of materials, strikes, acts of God or any other cause beyond its reasonable control.

8.2 Storage of products must be in accordance with the requirements stated on each pack, i.e. refrigerated and cool storage facilities for specified products must be provided.

- 8.3 The risk in products purchased shall, unless otherwise agreed in writing, pass to the Purchaser upon delivery to the Purchaser or his agent or to a carrier commissioned by the Purchaser.
- 8.4 The printing of New Zealand Product Numbering codes on its product packs by Upjohn is not the subject of any contract between Upjohn and the Purchaser. Upjohn will endeavour to observe the rules and principles of the New Zealand Product Numbering Association or any successor to the function thereof, but will not be liable to the Purchaser in any manner whatsoever for any loss, damage or expense attributable either directly or indirectly to the absence of, or error in such code printing.
- 8.5 These terms and conditions shall be governed by the New Zealand law. In any or all legal actions that may howsoever arise from this contract the Purchaser agrees to have such matters determined within the jurisdiction of the New Zealand Courts and their appellate Courts.
- 8.6 The Purchaser agrees that Upjohn may deal with the Purchaser electronically including but not limited to having the Purchaser electronically sign documents and receive electronic notices, including without limitation, invoices, statements, receipts, records or other documents (collectively Notices) at an electronic address or addresses (whether email address, SMS number or otherwise) nominated by the Purchaser in the Purchaser's account application or that the Purchaser may advise Upjohn from time to time for that purpose. The delivery of any Notice from Upjohn is effective when sent by Upjohn, regardless of whether the Purchaser has read the Notice when the Purchaser receives it or whether the Purchaser actually receives the delivery. Upjohn also reserves the right to deal non-electronically and to require the Purchaser to do so.
- 8.7 Upjohn reserves the right to vary or add to these terms and conditions of sale at any time without notice. Terms and conditions of sale are available on request. It is the Purchaser's responsibility to review the Terms and Conditions.
- 8.8 Upjohn's rights are not limited by, or because of, any guarantee, indemnity or other security or security interest that Upjohn holds in connection with the Purchaser's obligations.
- 8.9 The Purchaser is bound by any certificate signed by any of Upjohn's managers, directors or solicitors which shows any amount of calculation relevant to what the Purchaser owes Upjohn. The only exception is where the Purchaser can prove the certificate is incorrect.
- 8.10 Upjohn may collect personal information as a result of its dealings with the Purchaser. If so,

Upjohn will abide by its privacy policy. A copy of that policy is available on request.

- 8.11 Where the Purchaser is in trade, the parties each agree, for the purposes of section 5D of the Fair Trading Act 1986, that they are contracting out of sections 9, 12A and 13 of the Fair Trading Act 1986 in respect of all conduct and representations in connection with this Contract.

## 9. SECURITY INTEREST

- 9.1 The Purchaser grants a security interest (as that term is defined in section 17 of the Personal Property Securities Act 1999 ("PPSA")) ("Security Interest") to Upjohn in each and every part of the Goods as security for payment of that part and of each other part or parts of the Goods and for any other amounts owing by the Purchaser to Upjohn from time to time, and for the performance by the Purchaser of all the Purchaser's other obligations to Upjohn from time to time ("Purchaser's indebtedness and obligations"). The Security Interest created under these terms continues until all of the Purchaser's indebtedness and obligations have been repaid or fulfilled, notwithstanding any intermediate payments and settlements of account. For the purposes of section 36(1)(b) of the PPSA, and to ensure maximum benefit and protection for Upjohn by virtue of section 36(1)(b)(iii) of the PPSA, the Purchaser confirms and agrees that the Purchaser intends to and does grant to Upjohn, as security for the Purchaser's indebtedness and obligations, a security interest in all of the Purchaser's present and after-acquired property except only for any such property which is or comprises items or kinds of personal property ("excepted property");
- 9.1.1 in or to which the Purchaser has rights; and
- 9.1.2 which has not been supplied by Upjohn to the Purchaser, other than any excepted property which is or comprises proceeds of any of that present and after-acquired property which has been supplied by Upjohn to the Purchaser.
- 9.2 Upjohn authorises the Purchaser to sell, in the ordinary course of business of the Purchaser, any Goods that are comprised in the Purchaser's inventory, provided that:
- 9.2.1 such authority may be revoked by written notice from Upjohn at any time if Upjohn deems the credit of the Purchaser to be unsatisfactory or if the Purchaser is in default in the performance of its obligations under the Contract or any other contract between Upjohn and the Purchaser, and shall be

deemed automatically revoked if the Purchaser shall commit any act of bankruptcy, enter into any composition or arrangement with its creditors, or (in the case of a company) do any act which would render it liable to be wound up or if a resolution is passed or proceedings commenced for the winding up of the Purchaser or a receiver is appointed in respect of all or any assets of the Purchaser; and

- 9.2.2 until the Purchaser's indebtedness and obligations have been repaid or fulfilled, the Purchaser shall hold such part of the proceeds it receives from any sub-sale of the Goods under this clause 9.2 that is less than or equal to the Purchaser's indebtedness and obligations at the time of receipt as fiduciary agent and trustee for Upjohn.
- 9.3 Until the Purchaser's indebtedness and obligations have been repaid or fulfilled, the Purchaser must not grant a security interest in the Goods to any other person, or otherwise encumber the Goods in any way.
- 9.4 While the Goods continue to secure the Purchaser's indebtedness and obligations, the Purchaser will, unless otherwise required by Upjohn, store the Goods separately and clearly identify the Goods as being subject to Upjohn's security interest.
- 9.5 Upjohn shall be entitled to enter, as the agent of the Purchaser, the premises where any of the Goods are situated and remove those Goods at any time without being responsible for any damages if in the opinion of Upjohn payment for the those Goods is unlikely to be made.
- 9.6 The Purchaser agrees to do anything that Upjohn reasonably requires to ensure that Upjohn has a perfected security interest in all the Goods and a purchase money security interest (as that term is defined in section 16 of the PPSA) in each part of the Goods to the extent of the purchase price for that part.
- 9.7 Upjohn may allocate amounts received from the Purchaser in any manner it determines, including in any manner required to preserve any purchase money security interest (as that term is defined in section 16 of the PPSA) it has in any Goods.
- 9.8 The Purchaser agrees to reimburse Upjohn for all costs and/or expenses incurred or payable by Upjohn in relation to registering, maintaining or releasing any financing statement in respect of any security interest under the Contract.
- 9.9 The Purchaser waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interest under the Contract.

- 9.10 The Purchaser agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to this Contract, or the security under this Contract, and waives the Purchaser's rights under sections 121, 125, 129, 131 and 132 of the PPSA.

## 10. GUARANTEES

- 10.1 Where the Purchaser is in trade, the Purchaser agrees that the Consumer Guarantees Act 1993 does not apply to this Contract
- 10.2 Where the Purchaser supplies the Goods to a person acquiring them in trade, it must be a term of the Purchaser's contract with that person that the Consumer Guarantees Act 1993 does not apply to that contract.
- 10.3 The Purchaser acknowledges that Upjohn does not provide any Express Guarantees (as defined in the Consumer Guarantees Act 1993) other than those expressly confirmed by Upjohn in writing.
- 10.4 Where the Purchaser supplies the Goods to any other person in the course of trading, the Purchaser must not give or make any undertaking, assertion or representation in relation to the Goods without the Upjohn's prior approval in writing.
- 10.5 The Purchaser agrees to indemnify Upjohn against any liability or cost incurred by under the Consumer Guarantees Act 1993 as a result of any breach by the Purchaser of the obligations contained in this section 10.
- 10.6 The following terms apply wherever the Consumer Guarantees Act 1993 does not apply to the Contract, or where the following terms are not inconsistent with the Consumer Guarantees Act 1993:
- 10.6.1 Defective Goods or Goods which do not comply with the Contract shall at Upjohn's discretion be replaced in accordance with section 7, or the price refunded.
- 10.6.2 Upjohn accepts no liability to repair, replace or refund any defective Goods:
- 10.6.2.1 if the defective Goods have been modified without the approval of Upjohn; or
- 10.6.2.2 if the defective Goods have not been stored, maintained, installed or operated in a proper manner. Upjohn shall not be obliged to replace or refund any defective Goods for so long as the Purchaser is in default in relation to any payment or in the performance of any obligation under the Contract.

- 10.6.3 If the Goods or any component or components thereof are not manufactured by Upjohn, then the warranty contained in clause 10.6.1 shall not apply to such Goods, component or components as are not manufactured by Upjohn and no warranties are given by Upjohn in respect of such Goods, component or components. In the case where the manufacturer or Upjohn of any such Goods, component or components provides any warranty, then Upjohn (to the extent that it is able to do so) shall make such warranty available to the Purchaser.
- 10.6.4 Upjohn accepts no liability for any Claim by the Purchaser or any other person, including without limitation any Claim relating to or arising from:
- 10.6.4.1 any conditions, warranties, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability or otherwise, whether express or implied by law, trade, custom or otherwise; or
- 10.6.4.2 any representations, warranties, conditions or agreement made by any agent or representative, which are not expressly confirmed by Upjohn in writing, and the Purchaser agrees to indemnify Upjohn against any such Claim.
- 10.6.5 Where the Contract provides for any testing or commissioning procedure or any other acceptance procedure in respect of the Goods, no claim shall be made by the Purchaser if the Goods fail to comply with the requirements of the Contract at any time after the successful completion of such testing, commissioning or acceptance procedures, subject however to the warranty in respect of defective Goods contained in clause 10.6.1.
- 10.6.6 In any event, Upjohn's liability under any such Claim shall not exceed the Contract Price of the Goods.
- 10.6.7 No Claim shall be brought by the Purchaser against Upjohn unless brought within one year from the date of delivery of the shipment of goods to the Purchaser or from the date of the alleged breach of the Contract whichever is earlier.
- 10.7 Nothing in these terms is intended to have the effect of contracting out of the provisions of the Consumer Guarantees Act 1993 except to the extent permitted by that Act, and these terms and conditions of sale are to be modified to the extent necessary to give effect to that intention.
- 11. WAIVER AND VARIATION**
- A provision of or a right created under these terms in favour of Upjohn may not be waived or varied except in writing signed by Upjohn. Upjohn may elect not to exercise its rights arising from a breach of any provision of these terms and such election, even if the breaches are continuous and multiple shall not create any estoppel or presumption against Upjohn.
- 12. IMPROPER PAYMENTS**
- 12.1 If Upjohn pays the Purchaser a rebate in respect of purchases under these terms and conditions, the Purchaser warrants and represents that the Purchaser has not and will not promise, pay or give anything of value either directly or indirectly to any government official for the purpose of obtaining or retaining business or any improper advantage for Upjohn. In this clause, 'government official' means any official, officer, representative, or employee of, including any health care professional, employed by any government department, agency or instrumentality (including any government-owned or controlled commercial enterprise), or any official of a public international organisation or political party or candidate for political office.
- 12.2 The Purchaser will at all times comply with the Upjohn Anti-Bribery and Anti-Corruption Principles which are available on request.
- 12.3 The Purchaser agrees to permit Upjohn to take reasonable steps to ensure that rebates paid are properly used by permitting Upjohn's auditors to access any relevant books, documents, papers and records of the Purchaser involving the payment of rebates by Upjohn.
- 12.4 Upjohn may terminate the Purchaser's credit account if Upjohn learns that the Purchaser is making, or has made, improper payments to government officials.