

## **1. Definitions**

"Company" means **Millpledge Limited**.

"Customer" means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the sale of Goods by the Company.

"Contract" means any contract between the Company and a Customer.

"Goods" means any product to be supplied or sold to the Customer by the Company.

"Site" means the place where the Goods are to be delivered.

## **2. These Terms and Conditions to Prevail**

2.1 All Contracts between the Company and the Customer, whether made orally or in writing, are subject to these terms and conditions which shall be deemed to be incorporated into any contract or transaction between the Company and all or any of its Customers.

2.2 These terms and conditions shall supersede all prior understandings, and shall constitute the whole agreement, between the Company and the Customer. They shall not be modified or varied by the Customer unless specifically accepted by the Company in writing.

2.3 In the event of any conflict between these terms and conditions and any other terms and conditions (whether express or implied, incorporated or referred to in any communication from the Customer) then these terms and conditions shall prevail and the Customer's terms and conditions shall be excluded in whole from the Contract.

## **3. Quotations and Acceptance of Order**

3.1 A quotation or price amendment by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Customer's order. Unless otherwise stated, all prices quoted shall be deemed to be withdrawn on or after the date stated on the quotation.

3.2 Subject to the Company's sole discretion, no cancellation or variation of an order by the Customer is accepted by the Company unless approved in writing by a Director or Departmental Manager of the Company. In case of cancellation or variation of an order, the Customer agrees to indemnify the Company in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

## **4. Specification**

4.1 The description and illustrations of the Goods given to the Customer, or contained in the Company's catalogues, brochures, price lists and other advertising materials, are intended to present a general idea of the Goods only and shall not form part of the Contract.

4.2 Any prices set out in the Company's brochures, catalogues or price lists are not binding on the Company and must be confirmed with the Company prior to placing an order.

4.3 The Company shall not be liable for any variations in any specification or description of the Goods which do not materially affect the use and operation of the Goods, or for the substitution of any materials or component parts of a quality equivalent or superior to that originally specified and the Company reserves the right to make any changes in the specification which are required to conform with any applicable safety or other statutory requirements.

4.4 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods unless confirmed in writing by the Company and, in entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings which are not so confirmed.

## **5. Prices**

5.1 All prices shall be calculated and paid in Sterling or, on the Customers written request, may be paid in Euros, US or Canadian Dollars or such other currency as the Company may at its sole discretion accept.

5.2 Unless stated otherwise, all prices are quoted exclusive of VAT, Sales Tax or GST/HST or other relevant taxes.

5.3 The Company reserves the right, by giving notice to the Customer at any time before delivery (or during delivery where the Contract is being performed in stages or over a period of time) to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs), any change in delivery or performance dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

## **6. Customers Responsibilities and Warranty**

6.1 The Customer shall be solely responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

6.2 The Customer shall fully indemnify the Company against any losses, costs, claims, damages and expenses awarded against or incurred by the Company, or its employees or agents, as a result of a claim by any third party that any product made from the Goods is defective (save to the extent that any such claim results from the

supply by the Company of Goods which do not correspond with their specification for reasons for which the Company is liable) or arising as a result of any negligent act or omission or any deliberate act or instruction of the Customer, or its employees or agents while they are working on, or travelling to or from, the Site.

6.3 It is the sole responsibility of the Customer to ensure that all product packaging, labels or leaflets accompanying the Goods are read carefully and that any advice or instructions so given are carefully followed.

#### **7. Payment**

7.1 The Company will confirm in writing that account facilities have been opened for the Customer.

7.2 Payment of any invoice must be made by the Customer in full within 30 days of the date of invoice or as otherwise stated.

7.3 Any amount due by the Customer to the Company under the Contract shall be payable in full without any compensation, set-off or counterclaim.

7.4 Time of payment shall be of the essence of all Contracts.

7.5 Payment must be made when due, notwithstanding that property in the Goods has not passed to the Customer.

7.6 Where any account, or any part thereof, is overdue for payment the Customer shall cease to be entitled to the benefit of any discount specified in that account and the Company shall be entitled to charge interest, at the rate of 3 per centum per annum above the Lloyds Bank plc (UK) Bank of America (USA) HSBC (Canada) base rate in force from time to time, on the amount due from the due date for payment until the actual date when payment in full, including interest, is received by the Company, and such interest shall be charged as well after as before any judgement.

7.7 If the Customer fails to make timeous payment in accordance herewith then, in addition to any other remedies available to the Company, the Company may either suspend all further deliveries of the Goods under the Contract until payment is made in full or, at its option, treat the Contract as repudiated.

7.8 If the Customer repudiates the Contract for any reason, or is deemed to have repudiated the Contract in accordance with Clause

7.7, then the Company shall, in addition to any other remedy available to it, be entitled to seek damages for any loss suffered by it as a result of the Customer's repudiation.

7.9 The Company, in its sole discretion, may require full or partial payment of the price prior to delivery or may require the provision of security for payment by the Customer, in a form acceptable to the Company.

#### **8. Retention of Title**

This provision shall apply to all and any Goods supplied to the Customer by or on behalf of the company:

a) Legal and beneficial ownership and title in and to the Goods shall not pass from the Company to the Customer until all monies due by the Customer (or any of its associated subsidiary or holding companies) to the Company (or any of its associated subsidiary or holding companies) under the Contract (including the Company's terms and conditions applicable to and forming part of the Contract) between them, including any interest and charges, have been paid in full. Until such time as property and title in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and free from any lien, charge or encumbrance and properly stored, protected and insured and identified as the Company's property and shall at any time during the business hours allow (without requirement for any further written consent) the Company access to the place where the Goods are stored for the purposes of verifying that this has been done.

(b) Until such time as property and title in the Goods passes to the Customer, the Company shall be entitled at any time to require the Customer at its own cost to immediately deliver up the Goods to the Company, or its employees or agents, or, at the Company's sole discretion, forthwith to enter upon any premises or property of the Customer or any third party where the Goods are stored and to repossess the Goods.

(c) The Customer shall not be entitled to pledge, or in any way charge by way of security, any of the Goods which at all times remain the property of the Company but, if the Customer does so, all moneys owing by the Customer to the Company shall, without prejudice to any other remedy available to the Company, forthwith become due and payable.

(d) If: - (i) the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction): or

(ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

(iii) the Customer ceases, or threatens to cease, to carry on business; or

(iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly. Then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any contract or suspend any further deliveries under any contract without any liability to the Customer, and if the Goods have been delivered but not paid for in full, the legal and beneficial title to the Goods remains with the Company and, provided the Goods are identifiable as the Company's, no receiver or liquidator of the Customer shall sell the Goods. In these circumstances, the Company shall be entitled to enter any premises or property where the Goods are located and repossess the Goods.

(e) The Customer shall not be entitled to in any way annex the Goods to the property or premises or sell the Goods to a third party without the Company's prior written consent.

(f) The Company retains and reserves the legal and beneficial ownership and title in and to the Goods until the Customer has paid for all and any Goods supplied by the Company to the Customer and has repaid all other moneys owed to the Company regardless of how such indebtedness arose.

#### **9. Risk**

9.1 Notwithstanding that property and title in the Goods has not passed under Clause 8 hereof, the risk of loss, damage or destruction to the Goods shall pass to the Customer on delivery.

#### **10. Delivery**

10.1 Unless otherwise specified, delivery and performance dates or periods given by the Company are estimates only and shall not be essential terms of the Contract.

10.2 Subject to certain minimum order quantity restrictions (as advertised by the Company from time to time), all orders are delivered free of charge, with the exception of Pharmaceuticals.

10.3 Delivery of the Goods shall take place:-

(a) in the event that the Company undertakes delivery of the Goods, when the Goods are unloaded from the Company's means of transport at the station or address specified by the Customer.

(b) in the event that the Customer undertakes to collect the Goods, when the Goods are loaded on to the Customer's carriage, lorry or other transport at the Company's premises.

10.4 Any receipt obtained by the Company from the Customer, or its employee or agent, accepting or taking delivery of the Goods (or such part thereof as is indicated by the receipt) shall be conclusive evidence of delivery in perfect condition or satisfactory performance by the Company.

10.5 The Company may elect to deliver the Goods in instalments and no failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as a whole as repudiated.

10.6 If the Customer fails to take delivery of the Goods (or any part(s) thereof) or to give adequate instructions to enable the Goods to be delivered on the due date, the Company may issue a written notice to the Customer stating that risk in the Goods shall be deemed to have passed to the Customer on the date delivery was due.

Thereafter the Company shall store the Goods at the Customer's expense but, regardless of whether or not a written notice has been given to the Customer by the Company, the Customer shall indemnify the Company in respect of all losses, costs, claims, damages, and expenses incurred by the Company arising as a result of the Customer's failure.

#### **11. Goods not conforming to Contract**

11.1 The Customer shall be deemed to have examined the Goods within 7 days of delivery thereof (time being of the essence) and to have satisfied itself that they conform to Contract. A claim that Goods are not in accordance with the Contract will not be accepted by the Company unless notice in writing, specifying the alleged default and stating what is required of the Company to remedy the alleged default, is given to the Company within 14 days of delivery of the Goods.

11.2 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained and shall be left unaltered, by the Customer intact as delivered for a maximum period of 28 days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods. Any breach of this condition will release the Company from any liability for Goods which are alleged not to conform to Contract

11.3 If the Company agrees with the Customer that the Goods are damaged or defective, then the Company shall, at its sole discretion, replace the Goods or credit the Customer accordingly.

11.4 If the Company disagrees with the Customer that the Goods are damaged or defective, or disagrees in relation to how such a defect should be remedied then the dispute shall be referred to an independent third party appointed jointly by the Company and the Customer or, failing agreement within 7 days, by a party appointed, on the application of either the Company or the Customer, by the President for the time being of the East Midlands Chamber (Derbyshire, Nottinghamshire, Leicestershire). Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Company and the Customer.

11.5 Company shall have no liability to the Customer in respect of damaged or defective Goods (and the Customer shall be required to pay the full contract price) where:-

(a) any claim made by the Customer is not in accordance with these terms and conditions

(b) damage has been sustained after delivery of the Goods to the Customer, or its agents

(c) defects are caused by storage, misuse or improper operation other than in accordance with any instructions supplied orally or in writing with the Goods or if any adjustment, alteration or other work has been performed on the Goods by any person other than the Company or its employees or agents.

(d) a receipt has been obtained by the Company, duly signed by the Customer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition.

11.6

(a) . **Pharmaceuticals** must be stored and kept in accordance with the storage requirements stated on the label. Unopened and eligible for resale. Daily temperature records must be kept and provided should a return authorisation (RA) to Millpledge take place for credit. Credit cannot be offered if a storage temperature log does

not accompany the return of the product to Millpledge along with a Return Authorisation (RA) number (provided by Millpledge). Millpledge will organise at its cost a return collection for its order processing errors. Pharmaceutical items returned to Millpledge will incur a re-stocking fee to cover the cost of temperature controlled transportation and a return to stock administration and or disposal fee of £19. Millpledge can arrange on the customers' behalf temperature controlled transport. A Pharmaceutical return for Credit or transaction can only be issued or take place under these terms and are in accordance with MHRA & VMD guidelines.

## 12. Re-Stocking Fee

If goods;

- (a) Are surplus to requirements because the goods were ordered in error
- (b) Are no longer required and the product and has received a Millpledge issued RMA (within 7 days)

The following re-stocking fees apply

Product Type	Carriage Cost	Re-stocking Charge (total charge if customer is returning the goods)	Total Cost for Millpledge to collect the goods
Disposable Product	£7	£5	£12
Pharmaceutical (if approval is received)	£14 (Temp Controlled)	£5	£19

The cost of the re-stocking and/or carriage charge to be paid by the customer is subtracted from the value of the credit that is issued to the customer.

## 13. Limitation of Liability

13.1 The Company shall be under no liability:-

- (a) in respect of any defect in the Goods arising from any design or specification supplied by the Customer
- (b) where any of the circumstances referred to in Clause 11.7(a) to (d) occur
- (c) to the extent that the total price for the Goods has not been paid by the due date for payment
- (d) where parts, materials or equipment have not been manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer of the Goods to the Company.
- (e) for any consequential loss howsoever caused.
- (f) where a registered veterinarian, pet owner or client relationship does not exist directly and in person.
- (g) and where any product used is not under the strict direction of a registered veterinarian.

13.2 The Company's liability howsoever arising shall not in any event exceed the total price for the Goods.

13.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

13.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

## 14. Export terms

14.1 Where the Goods are supplied for export from the United Kingdom, USA, Canada or Belgium, the provisions of this Clause 13 shall apply notwithstanding any other provision of these terms and conditions.

14.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.

## 15. Force Majeure

The Company shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside the Company's control, whether an Act of God or otherwise.

## 16. Notices

Any written notice to be given under the Contract shall be given by way of first class Recorded Delivery post or facsimile or electronic mail transmission or by personal delivery by the party giving it to the other, at his last known business address notified to the other, and shall be deemed to be delivered either 48 hours after posting (in the case of a letter) or immediately after receipt (in the case of facsimile or electronic mail transmission or personal delivery).

## 17. Indemnity

The Customer shall fully indemnify the Company against all costs, claims, damages and expenses to which the Company may become liable if use of the Goods by the Customer in any way involves an infringement of an intellectual property right enjoyed by a third party.

## 18. Determination

If the Customer shall make default in, or commit any breach of, any of its obligations to the Company, or if any distress or execution shall be levied upon the Customer, its property or assets or if the Customer shall make or offer to make any arrangement or composition with its creditors or if any petition or receiving order in bankruptcy shall be presented or made against the Customer or, if the Customer is a limited company, any

resolution or petition to wind up the Customer's business is passed or presented (otherwise than for reconstruction or amalgamation) or if a receiver is appointed to the Customer's undertaking, property or assets or any part thereof, then the Company shall have the right forthwith to determine any order then subsisting, without prejudice to any other remedies available to the Company, and all sums to be paid to the Company by the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

**19. General**

19.1 The Customer shall not be entitled to assign or transfer, in whole or in part, the benefit or burden of the Contract without the Company's prior written consent.

19.2 The rights and remedies of the Company set out in these terms and conditions shall be in addition, and without prejudice, to any other rights and remedies which may be available to the Company at common law or under statute.

**20. Invalidity**

If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

**21. Governing Law**

These terms and conditions shall be governed by and construed in accordance with the Law of England and except where otherwise expressly provided for herein the parties hereto hereby choose and submit to the jurisdiction of the English courts.

**TERMS AND CONDITIONS OF SALE 2016**