

Barbican Animal Health Ltd

Terms and Conditions – Last Updated 8th April 2019

1. Interpretation

1.1 Definitions:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commencement Date: the date the Contract commences, as set out in the Order Confirmation.

Conditions: these terms and conditions set out in clause 0 to clause 13.11 (inclusive).

Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with the Order Confirmation and these Conditions.

Delivery Date: the date specified for delivery of an Order, as set out in the Order Confirmation.

Delivery Location: the address for delivery of the Goods, as set out in the Order Confirmation.

Force Majeure Event: events, circumstances or causes beyond a party's reasonable control.

Goods: the goods (or any part of them), as set out in the Order Confirmation.

Order: an order for the Goods submitted by the Customer.

Order Confirmation: the order confirmation issued by the Supplier to the Customer which sets out, amongst other things, the Goods and the Price.

Price: the price for the Goods, as set out in the Order Confirmation.

Specification: any specification for the Goods that is agreed by the Customer and the Supplier.

1.2 Interpretation:

(a) a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(b) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(c) a reference to **writing** or **written** includes emails.

2. Commencement and term

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues the Order Confirmation, at which point the Contract shall come into existence.

3. Orders

3.1 The Supplier may accept or decline Orders at its absolute discretion. The Supplier may, at its discretion, accept an amendment to an Order by the Customer.

3.2 The Supplier shall assign an order number to each Order it accepts and notify the order number to the Customer. Each party shall use the relevant order number in all subsequent correspondence relating to the Order.

3.3 The Customer is responsible for ensuring that Orders and any applicable Specification are complete and accurate. The Customer shall give the Supplier all necessary information that the Supplier reasonably requires in order to fulfil the Order.

4. The Goods

4.1 Any samples, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's materials are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

4.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. Delivery

5.1 The Supplier shall ensure that the delivery of Goods is accompanied by a delivery note which shows the order number, the type and quantity of Goods and, if the relevant Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

5.2 The Supplier shall endeavour to deliver Goods to the Delivery Location on the relevant Delivery Date.

5.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

5.4 Delivery Dates are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by:

(a) a Force Majeure Event; or

(b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.5 If the Supplier fails to deliver Goods by the relevant Delivery Date, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the Price of the Goods. The Supplier shall have no liability for any failure to deliver Goods to the extent that such failure is caused by:

(a) a Force Majeure Event; or

(b) the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.6 If 5 Business Days after the day on which the Supplier attempted to make delivery of Goods the Customer has not taken delivery of those Goods, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods, or charge the Customer for any shortfall below the price of the Goods.

5.7 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

5.8 The Supplier may deliver Orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

6. Quality and fitness for purpose

6.1 The Supplier warrants that, for the period from the date of delivery to the best before date or use by date applicable to the relevant Goods (**warranty period**), the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

6.2 Subject to clause 6.3, if:

(a) the Customer gives notice in writing to the Supplier during the warranty period, promptly after discovery that some or all of the Goods do not comply with the warranties set out in clause 6.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

the Supplier shall, at its option, replace any Goods that are found to be defective, or refund the price of such defective Goods in full.

6.3 The Supplier shall not be liable for any Goods' failure to comply with the warranties set out in clause 6.1 if:

(a) the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 6.2;

(b) the defect or liability arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage and use of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Customer failing to follow any relevant codes of conduct issued by Defra or the Food Standards Agency relating to the storage of compound feeds, premixtures, feed materials and feed additives;

(d) the Customer alters such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

(f) the Goods differ from their description or any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 6.1 is as set out in this clause 6.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 The terms of the Contract shall apply to any repaired or replacement Goods supplied by the Supplier.

7. Title and risk

7.1 Risk in Goods shall pass to the Customer on completion of unloading the Goods at the Delivery Location.

7.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1(b); and

(e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

7.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 7.3, and to recover any Goods in which property has not passed to the Customer.

7.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

8. Product recall

8.1 If the Supplier is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market (**Recall Notice**) it shall immediately notify the Customer in writing enclosing a copy of the Recall Notice.

8.2 After the issue of a Recall Notice:

(a) the Customer shall not use any of the Goods which are the subject of the Recall Notice; and

(b) the Customer shall make available to the Supplier for collection any Goods which are the subject of the Recall Notice; and

(c) the Customer shall comply with any instructions given by the Supplier as to the process of implementing the withdrawal.

8.3 The Supplier shall reimburse the Customer for any Goods which are the subject of a Recall Notice.

9. Price and payment

9.1 The Customer shall pay for Goods in accordance with this clause 9.

9.2 The Price excludes:

(a) the costs of transport of the Goods, which shall be invoiced to the Customer in addition to the Price; and

(b) amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

9.3 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after delivery or attempted delivery of the Goods. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

9.4 The Customer shall pay invoices in full in cleared funds by the 28th day of the month following the month of invoice. Payment shall be made by direct debit to the bank account nominated in writing by the Supplier (or such other payment method as is agreed between the Supplier and the Customer).

9.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 12:

(a) the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;

(b) the Supplier may suspend all further deliveries of Goods until payment has been made in full.

9.6 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

10. Limitation of liability

10.1 Nothing in this Contract shall limit or exclude the Supplier's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation;

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(d) defective products under the Consumer Protection Act 1987; or

(e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

(a) the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

(b) the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to

total sums paid and/or payable by the Customer for Goods under this Contract.

11. Advice

Unless otherwise agreed between the parties, advice by the Supplier to the Customer shall not form part of the contract. The Supplier accepts no responsibility for any advice or purported advice given to the Buyer by their employees, servants or agents and accepts no liability for any injury, loss and/or damage resulting directly and/or indirectly from any such advice.

12. Termination

12.1 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of that party being notified in writing to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

12.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

13. General

13.1 Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Contract by giving 14 days' written notice to the affected party.

13.2 Assignment and other dealings.

(a) The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

(b) The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

13.3 Confidentiality.

(a) Each party undertakes that it shall not at any time during this agreement, and for a period of two years after delivery of the Goods, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 13.3(b). For the purposes of this clause, **group** means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

13.4 Entire agreement.

(a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

13.5 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a

provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.8 Notices.

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.8(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one Business Day after transmission.

(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.9 Third party rights. No one other than a party to this Contract shall have any right to enforce any of its terms.

13.10 Governing law. This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

13.11 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.