

Fox Pharma Limited – Terms and Conditions

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Cold Chain Products: products which must remain at or below 4⁰C at all times before use.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.7.

Contract: the contract between the Supplier and the Customer for the supply of Products and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Customer: the person or firm who purchases the Products and/or Services from the Supplier.

Delivery Location: has the meaning given in clause 4.4.

Force Majeure Event: has the meaning given to it in clause 14.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Products and/or Services, as set out in online form completed by the Customer on the Website or agreed by the parties by another method and confirmed in writing by the Supplier.

Products: the goods (or any part of them) set out in the Order.

Products Specification: any specification for the Products on the Website.

Restricted Product: any Product which is only made available on prescription.

Services: the services supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: any specification for the Services on the Supplier's website.

Supplier: Fox Pharma Limited registered in England and Wales with company number 11653593.

Website: the Supplier's website at <https://foxpharma/> or such other address as shall be notified by the Supplier to the Customer from time to time.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Products or Services or Products and Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 Any samples, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products

described in them. They shall not form part of the Contract nor have any contractual force.

- 2.4 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 law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.
- 2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. Products

- 3.1 The Products are described in the Products Specification. The Supplier shall be under no obligation to supply Products unless the Customer complies in full with the Supplier's procedures in relation to Restricted Products from time to time, guidelines of the Customer's regulatory body and all applicable law. The Customer shall ensure that each prescriber of Products (who shall be an appropriate authorised representative of the Customer) confirms their awareness that each time that an order for a Restricted Product is placed by the Customer, the prescriber shall be treated as having made the Declaration in Appendix A.
- 3.2 The Supplier reserves the right to amend the Products Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event. It also reserves the right to notify the Customer's regulatory body if the Supplier is aware of any breach of regulatory guidelines and/or applicable law resulting from any use of the Products by the Customer.
- 3.3 The Customer warrants that:
 - (a) it is buying Products for use in the UK and the Republic of Ireland (or any other country expressly agreed in writing by the Supplier);
 - (b) each member of the Customer's staff that will be using the Restricted Products has passed a certified and accredited training course in relation to the Products.
- 3.4 The Customer acknowledges and agrees that it has sole and full responsibility for any use or misuse of the Restricted Products.

4. Delivery of Products

- 4.1 All mainland UK orders placed before the cut-off time on a Business Day will be despatched with the Supplier's nominated courier for next Business Day delivery and the cut-off time shall be 6.00pm except in relation to Northern Ireland and parts of Scotland (**Outer Delivery Territory**) where the cut-off time shall be 3.00pm. For the purposes of this clause 4 only, 'Business Day' shall, in relation to mainland UK orders not in the Outer Delivery Territory for Cold Chain Products, include Saturday.
- 4.2 In relation to all other orders, delivery should take within 3 to 5 Business Days from date of order.
- 4.3 The Customer acknowledges and agrees that:
- (a) it is responsible for ordering Products on such dates as shall ensure that it has sufficient Products to meet its requirements;
 - (b) any changes using the third party delivery agent's app on the day Products are to be delivered may delay delivery;
 - (c) the Supplier is not responsible for delays in delivery caused by its third party delivery agents;
 - (d) Where the third party delivery agent is not able to deliver on the date and at the time notified to the Customer, other than directly as a result of the act or omission of the third party delivery agent:
 - (i) the Customer is responsible for rearranging delivery with the third party delivery agent and for any reasonable administration charges levied by the Supplier; and
 - (ii) in relation to Cold Chain Products where the Customer must be available in person to take delivery, the Supplier shall not be responsible for any loss of or defect in the Cold Chain Products and shall be under no obligation to replace those Cold Chain Products nor to make any refund in respect of them;
 - (e) Where the Customer itself does not take receipt of the Products from the third party delivery agent the Supplier shall not be responsible for any loss of or defect in the Products and shall be under no obligation to replace those Products or make any refund in respect of them.
- 4.4 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) on the date notified by the Supplier and the Customer shall ensure that it or its representative is available to accept delivery.

- 4.5 Delivery of the Products shall be completed on the completion of receipt of the Products at the Delivery Location.
- 4.6 Except to the extent set out in clause 4.1, time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 4.7 If the Supplier fails to deliver the Products, 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 Products. The Supplier shall have no liability for any failure to deliver the Products to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products. The Customer shall notify the Supplier in writing of any failure to deliver within seven days of the Order date.

5. Quality of Products

- 5.1 The Supplier warrants that on delivery the Products shall:
- (a) conform in all material respects with their description and any applicable Products Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Products Act 1979); and
 - (c) be fit for any purpose held out by the Supplier.
- 5.2 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery and in any event within seven days that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Products; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

5.3 The Supplier shall not be liable for the Products' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Products after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use or maintenance of the Products or (if there are none) good practice regarding the same;
- (c) the Customer alters such Products without the written consent of the Supplier; or
- (d) the Products differ from their description or the Products Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any replacement Products supplied by the Supplier.

6. Title and risk

6.1 The risk in the Products shall pass to the Customer on completion of delivery.

6.2 Title to the Products shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Products.

7. Supply of Services

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Products and Services, including in relation to any product recall;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (e) comply with all applicable laws, including health and safety laws; and
- (f) comply with any additional obligations as set out in the Service Specification and the Products Specification.

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

- 9.1 The price for Products and Services shall be the price set out in the Order.
- 9.2 The Supplier reserves the right to increase the price of the Products, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products to the Supplier.
- 9.3 The Customer shall pay for Products and Services at the time it places the Order using BACS or debit/credit card via the Supplier's secure Elavon gateway. With the Supplier's prior written consent, the Customer may pay cash on collection.
- 9.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 9.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual property rights

- 10.1 All Intellectual Property Rights in the Products in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier (or its licensors).
- 10.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

11. Data protection

- 11.1 Each party will comply with all applicable requirements of the data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under that legislation. The Supplier shall process the

Customer's personal data in accordance with its privacy policy at <https://foxpharma.co.uk/privacy-policy/>.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time 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 of companies to which the other party belongs, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, contractors or subcontracts 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 the Contract. 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 12; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3 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 the Contract.

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 13.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 (five million pounds) per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 13.2 The Customer acknowledges and agrees that the Supplier accepts no liability for use of the Products.
- 13.3 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.4 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

- 13.5 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Products Act 1979 or section 2 of the Supply of Products and Services Act 1982 (title and quiet possession); and
 - (d) defective products under the Consumer Protection Act 1987.
- 13.6 Subject to clause 13.5, the Supplier's total liability to the Customer in respect of Products and/or Services shall not exceed the greater of £2,000 (two thousand pounds) and an amount equal to three times the amount paid to the Supplier by the Customer for those Products and/or Services.
- 13.7 This clause 13.7 sets out specific heads of excluded loss and exceptions from them:
- (a) Subject to clause 13.4 and 13.5, clause 13.7(c) identifies the kinds of loss that are not excluded. Subject to that, clause 13.7(b) excludes specified types of loss.
 - (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;
 - (v) loss of use or corruption of software, data or information;
 - (vi) loss of or damage to goodwill; and
 - (vii) indirect or consequential loss.
 - (c) The following types of loss and specific loss are not excluded:
 - (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Products or Services not provided in accordance with the Contract;
 - (ii) wasted expenditure;
 - (iii) losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions,

investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

13.8 The Supplier has given commitments as to compliance of the Products and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Products Act 1979 and sections 3, 4 and 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.9 This clause 13 shall survive termination of the Contract.

14. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for four weeks, the party not affected may terminate the Contract by giving seven days' written notice to the affected party.

15. General

15.1 Assignment and other dealings

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

15.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

15.3 **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.

15.4 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

15.5 Entire agreement.

(a) The 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 acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

15.6 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.7 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

15.8 Governing law. The 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.

15.9 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 the Contract or its subject matter or formation provided that either party may enforce any judgment of the courts of England and Wales in the courts of any jurisdiction.

Appendix A - Prescriber Declaration Restricted Products

Each time that an order for a Restricted Product is placed by the Customer, the prescriber (an appropriate authorised representative of the Customer) shall be treated as having made the following Declaration:

1. I confirm that:
 - a. the items in this prescription are only for the use of the patient named in this prescription;
 - b. I have the appropriate training and insurance for the prescribing and administration of the treatments in this prescription;
 - c. the patient has nominated Fox Pharma Limited as their pharmacy for dispensing¹ this prescription
 - d. the Customer has obtained the informed consent of the patient to the ordering, receiving, storing and paying for the items listed in this prescription and sharing the personal information (including any patient delivery address²) in this prescription with Fox Pharma Limited;
 - e. if I consider it appropriate for a qualified practitioner to administer this prescription to my patient under my direction, the named practitioner has been appropriately trained and insured, and I consider the said practitioner to be competent for such administration;
 - f. I am fully aware of and accept clinical, professional and legal responsibility for prescribing outside the licensed indications of any of the prescribed products (if any);
 - g. I have informed the patient of any storage instructions in relation to the items in the prescription;
 - h. the consultation and diagnosis leading to the treatment prescribed for this patient is based on my clinical judgement and I understand that VAT will not be charged on the prescription solely because it is for the healthcare treatment of this patient;
 - i. I take full responsibility for the items in the prescription on the basis that prescribing them is in the best interests of patient safety and consistent with professional conduct.
2. I agree to:
 - a. adhere to the rules set out by all applicable regulatory bodies including but not limited to the GPHC, MHRA, HMRC, CQC associated with my practice and procedures;
 - b. take responsibility for submitting a non-prescription order where the order is not for the healthcare treatment of the patient so that VAT is charged at the standard rate.

¹ For these purposes, 'dispensing' includes receiving the prescription from the patient (or patient's representative); carrying out appropriate legal checks including pharmacist clinical checks; and arranging payment and delivery.

² The chosen delivery address (and any authorised recipient at this address) should be an address where product integrity is not compromised and the product is kept safe and secure from mis-use; and which does not jeopardise the personal data of the patient.