

GENERAL CONDITIONS OF SALES AND DELIVERY

1. DEFINITIONS

In these Conditions:

“**Conditions**” mean the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;

“**Contract**” means the contract for the sale and purchase of the Goods, which incorporates the Conditions;

“**Customer**” means the person specified in the Order Confirmation as purchaser of the Goods from the Seller;

“**Dispatch Date**” means the dispatch date shown in the Order Confirmation;

“**Force Majeure**” means, in relation to any person, any circumstances beyond the reasonable control of that person (including, without limitation, Act of God, war or threat of war, civil disturbance or requisition, acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, any strike, lock out, picket or other form of industrial action or any threatened industrial action);

“**Goods**” means the goods which the Customer agrees to buy from the Seller, as specified in the Order Confirmation;

“**Invoice**” means the invoice issued by the Seller in respect of the Goods;

“**Order Confirmation**” means the confirmation of an order issued by the Seller to the Customer on which reference is made to these Conditions;

“**Price**” means the price for the Goods, which is (save, in each case, to the extent otherwise stated in the Order Confirmation) inclusive of packaging and exclusive of carriage, insurance and VAT;

“**Seller**” means any of Rowa Pharmaceuticals Limited or Rowex Limited of Newtown, Bantry, Co. Cork;

“**VAT**” means any value added tax and any goods and services, sales or other turnover tax, imposition or levy of a like nature chargeable in respect of the sale of the Goods to the Customer.

2. CONDITIONS APPLICABLE

2.1 The Conditions shall apply to all contracts for the sale of Goods by the Seller to the Customer to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order or otherwise.

2.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to the Conditions.

2.3 No order for Goods submitted by the Customer shall be deemed to be accepted by the Seller unless an Order Confirmation is issued by the Seller to the Customer.

2.4 The Customer shall be responsible to the Seller for ensuring the accuracy of the terms of any order for Goods submitted by the Customer to the Seller and for giving the Seller any necessary information relating to the Goods within sufficient time to enable the Seller to perform the Contract in accordance with its terms.

2.5 Acceptance of delivery of the Goods by the Customer shall be deemed conclusive evidence of the Customer's acceptance of the Conditions.

2.6 Any variation to the Conditions shall be inapplicable unless evidenced by writing signed on behalf of the Seller by a duly authorised person. The Customer is notified that no person has been authorised by the Seller in this regard, and further, that no person may be taken by the Customer to have any such authority unless such person has presented to the Customer a written instrument, signed by a director of the Seller, conferring upon such person such authority in connection with the Goods.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.8 No order for Goods which has been accepted by the Seller may be cancelled by the Customer except with the agreement in writing of the Seller and on terms that the Customer shall indemnify the Seller in full against all losses (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3. PRICE AND PAYMENT

3.1 The Price of the Goods shall be the price set out in the Order Confirmation. The Price is exclusive of VAT, insurance, delivery and related charges (if any). In addition to paying the Price, the Customer shall pay to the Seller all applicable VAT. If the Price includes freight, customs duty or other duty on the Goods, any increase in these charges or duties after the Seller has issued the Order Confirmation to the Customer, and any new charges or fees that may arise after the Order Confirmation is issued, will be charged to and paid by the Customer.

3.2 The Customer shall pay direct to the Seller without deductions the Price plus applicable VAT within 30 days of the date of the invoice.

3.3 The Seller reserves the right to require payment for Goods in advance of dispatch of an order.

3.4 Time shall be of the essence of each of the Customer's obligations under this Clause 3.

3.5 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy of the Seller, the Seller may:

(a) charge the Customer interest on overdue payments under this Clause 3 (both before and after judgement) from the date when payment becomes due from day to day until the date of payment in full at the rate per cent per annum of five hundred basis points plus EurIBOR (at the three month rate, reckoned at three monthly intervals in each case for the three months next succeeding the day of reckoning, and first reckoned on the due date for payment for first three months), all such interest accruing from day to day compounded quarterly;

(b) cancel the Contract or suspend any further deliveries to the Customer; and

(c) appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Customer).

4. THE GOODS

- 4.1 The quantity and description of the Goods shall be as set out in the Order Confirmation.
- 4.2 The weights and measures of the Goods as determined by the Seller when leaving the Seller's premises shall, save in the case of manifest error, be binding on the Customer and the Seller.
- 4.3 Any samples of Goods provided by the Seller to the Customer are merely typical of the Goods and the Seller does guarantee delivery of Goods absolutely identical with the samples so provided.
- 4.4 The data provided by the Seller on quality and analyses of the Goods, particularly with regard to upper and lower limits, should be regarded as merely approximate, unless certain properties are expressly guaranteed by the Seller.

5. PACKING

- 5.1 Unless agreed otherwise by the Seller in writing, the Seller will not accept return of packing which is included in the Price or charged in addition to the Price.
- 5.2 As between the Seller and the Customer, returnable containers provided by the Seller to the Customer on a hire or loan basis remain the Seller's property. Unless instructions to the contrary are given by the Seller, such containers must immediately on delivery to the Customer be completely emptied, carefully sealed and returned to the Seller free of charge in good condition. The Customer accepts responsibility for all loss or damage, however caused, to such returnable containers until they arrive at the Seller's premises.
- 5.3 If returnable containers provided by the Seller contain Goods which, because of their nature, solidify or in which precipitates are formed, the contents must be correctly treated by heating or other appropriate measures before being emptied by the Customer. The Customer shall not carry on external heating of metal containers by placing them over fire or other heat source.
- 5.4 Packing and containers provided by the Customer for collection of the Goods should be dispatched to the Seller's premises, freight paid and in good condition, ready for use. The Seller does not accept responsibility for damage to or loss of such packing or containers while in the Seller's possession and in transit to the Customer.
- 5.5 The Seller does not guarantee to make use of the full capacity of such packing or containers.
- 5.6 No refund will be made by the Seller for residues of Goods remaining in the dispatch containers that are returned to the Seller. The Customer will bear any freight charges for this as well as the costs of removing such residues.

6. WARRANTIES

- 6.1 The Seller warrants that:
- (a) it will have the right to sell the Goods to the Customer at the time at which title to the Goods is to pass to the Customer;
 - (b) the Goods will be fit for such purposes as may be specifically notified in writing by the Seller to the Customer; and
 - (c) the Goods will correspond with their description at the time of delivery.

- 6.2 All other warranties, conditions or terms relating to the Goods (other than those provided for in Section 12 of the Sale of Goods Act 1893), whether implied by statute or common law or otherwise, are excluded to the fullest extent permitted by the law.

7. DELIVERY & RISK

- 7.1 Unless otherwise stated in the Order Confirmation, the Goods shall be delivered to the Customer FOB (as defined in Incoterms 2010) at the collection point as may be designated by the Seller from time to time on the Dispatch Date, and risk in the goods shall pass to the Customer in the manner provide for in that regard in Incoterms 2010
- 7.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery of the Goods shall not be of the essence of the Contract unless previously agreed by the Seller in writing.
- 7.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Customer's fault, and the Seller is accordingly liable to the Seller the Seller's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 7.4 If the Customer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (other than by reason of any cause beyond the Customer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods until actual delivery and charge the Customer for the reasonable cost (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the Price or charge the Customer for any shortfall below the Price.

8. TITLE

- 8.1 Title to the Goods shall not pass from the Seller until the Seller has received the Price plus VAT, and the price of all other goods agreed to be sold by the Seller to the Customer for which payment is then due, in full in cash or in cleared funds.
- 8.2 Until title to the Goods passes to the Customer in accordance with Clause 8.1, the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Customer shall (at no cost to the Seller) protect and insure the Goods and store the Goods separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 8.3 The Customer may sell the Goods in the ordinary course of business but must not otherwise sell, mortgage, encumber or part with possession of the Goods or allow any lien or encumbrance to arise over them, or purport to do any of these things.
- 8.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.

8.5 Until such time as property in the Goods passes from the Seller, the Seller may at any time inspect the Goods and may at any time repossess them, and for this purpose may enter upon any premises where they are stored or where they are reasonably thought to be stored.

9. REMEDIES OF CUSTOMER & SELLER'S LIABILITY

9.1 In the event of a breach by the Seller of any warranty in relation to the Goods set out in these Conditions, the Customer's sole remedy shall be to reject the Goods to which such breach of warranty relates. Upon such a rejection of the Goods, the Seller shall refund to the Customer that part of the Price which relates to such Goods to the extent that it has been paid by the Customer or replace the Goods to which the breach of warranty relates. Following such rejection and refund or replacement, the Customer shall have no further rights whatever in respect of the breach of warranty and the Seller shall have no further liability to the Customer.

9.2 The Seller shall be under no liability under the warranties if the Price has not been paid on the due date for payment.

9.3 Without prejudice to Clause 9.1, and in each case to the fullest extent permitted by applicable laws: (a) the Seller shall not be liable to the Customer for any loss of opportunity, loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings or any indirect or consequential loss, damage, cost or expense of any kind ((including, for the avoidance of doubt, whether such loss or damage is of a type specified in the foregoing) which the Customer may suffer or incur, which arises out of, or is connected with, a breach by the Seller of these Conditions or of any other obligation of the Seller, irrespective of whether the Customer's claim for recovery in respect of that loss, damage, cost or expense is (or would but for this provision be) founded in contract, tort (including negligence) or otherwise, and irrespective of whether or not the Seller has been advised of the potential for the loss in question; and (b) in no event shall the liability of the Seller to the Customer in respect of, or in relation to, or in connection with the Goods, whether arising in contract, tort or otherwise, exceed the amount (exclusive of VAT) actually paid by the Customer to the Seller in respect of the relevant Goods.

10. COMPLAINTS

10.1 Complaints relating to the Goods will only be entertained by the Seller if they are made immediately on receipt of Goods and if the Goods are still in the dispatch containers of the particular consignment.

10.2 Complaints concerning hidden defects or shortages in the Goods, that is those which appear only while or after the Goods are handled, will be entertained by the Seller only if they are reported immediately they become known. Complaints concerning such hidden defects or shortages reported after a period of 6 months following the delivery date will not be

entertained. If the complaints are justified, the Customer has only the right to return the Goods provided that they are still in their original condition as when delivered.

11. FORCE MAJEURE

If either the Seller or the Customer is affected by Force Majeure it shall forthwith notify the other party of the nature and extent thereof. Neither the Seller nor the Customer shall be deemed to be in breach of any of the Conditions, or otherwise be liable to the other by reason of any delay in performance, or non performance, of any of its obligations hereunder, to the extent that such delay or non performance is due to any Force Majeure of which it has notified the other party hereto; and the time for performance of that obligation shall be extended accordingly.

12. INSOLVENCY OF THE CUSTOMER

In the event that:

- (a) the Customer makes composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or there occurs in relation to the Customer any event analogous to any of those mentioned; or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- (c) the Customer ceases, or threatens to cease, to carry on business; or
- (d) the Seller 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 limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without liability to the Customer, and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. PARTIAL INVALIDITY

If any of the Conditions is or becomes illegal, invalid or unenforceable, that shall not affect the legality, validity or enforceability of any other of the Conditions.

14. LAW AND JURISDICTION

14.1 All contracts between the Seller and the Customer in respect of, or in relation to, or in connection with, the Goods and any non-contractual obligations arising out of or in connection with any such contracts are governed by and shall be construed in accordance with the laws of Ireland. The courts of Ireland shall have exclusive jurisdiction to hear and determine any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with the Goods or their sale to and purchase by the Customer and, for such purposes, the Customer irrevocably submits to the jurisdiction of the courts of Ireland.

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