

Terms and Conditions of Sale

1. INTERPRETATION

The following definitions and rules of interpretation in this condition 1 apply in these conditions:

Buyer: the buyer of the Products from Novartis whose name appears on the front page of the Order Form.

Novartis: Novartis Vaccines and Diagnostics Limited.

Contract: the agreement between Novartis and the Buyer for the sale and purchase of the Products pursuant to an Order Form or otherwise, incorporating or governed by these conditions.

Order Form: the written order of the Buyer for the Products.

Product(s): the human vaccine product(s) identified on the Order Form or otherwise.

2. APPLICATION OF TERMS

- 2.1 These conditions apply to all Novartis' sales of the Products to the Buyer. Any variation to these conditions and any representations about the Products shall have no effect unless expressly agreed in writing by Novartis. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Novartis which is not set out in the Contract.
- 2.2 No order placed by the Buyer shall be deemed to be accepted by Novartis until a written acknowledgement of order is issued by Novartis or (if earlier) Novartis delivers the Products to the Buyer.
- 2.3 Any terms included by the Buyer on any Order Form or otherwise, which purport to govern the relationship of the Parties in connection with the sale and purchase of Products are expressly excluded and do not form part of the Contract.

3. ORDERS

Orders should be addressed to Novartis at its Customer Services Department, Novartis Vaccines and Diagnostics Limited, Gaskill Road, Liverpool, L24 9GR. Telephone 08457 451500. Facsimile 0151 705 5669.

4. DELIVERY

- 4.1 Delivery of the Products shall take place in accordance with Novartis' delivery schedule. All deliveries must be signed by the Buyer on receipt. Any dates specified by Novartis for delivery of the Products are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.2 Subject to the other provisions of these conditions Novartis shall not be liable for any direct, indirect or consequential loss caused directly or indirectly by any delay in the delivery of the Products (even if caused by Novartis' negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds thirty (30) days.
- 4.3 Novartis may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Products as recorded by Novartis upon despatch from Novartis' place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 Any liability of Novartis for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.

6. RISK/TITLE

- 6.1 The Products are at the risk of the Buyer from the time of delivery. Ownership of the Products shall not pass to the Buyer until Novartis has received in full (in cash or cleared funds) all sums due to it in respect of (a) the Products; and (b) all other sums which are or which become due to Novartis from the Buyer on any account.
- 6.2 Until ownership of the Products has passed to the Buyer, the Buyer shall (a) hold the Products on a fiduciary basis as Novartis' bailee, (b) store the Products (at no cost to Novartis) separately from all other Products of the Buyer or any third party in such a way that they remain readily identifiable as Novartis' property, (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products, (d) maintain the Products in satisfactory condition and keep them insured on Novartis' behalf for their full price against all risks to the reasonable satisfaction of Novartis and on request the Buyer shall promptly produce the policy of insurance to Novartis and (e) keep the Products insured on behalf of Novartis and provide, on request, evidence of such insurance to Novartis.
- 6.3 Buyer's right to possession of the Products shall terminate immediately if: (a) Buyer fails to perform any of his/its obligations under these conditions or any other Contract with Novartis; (b) documents are filed with a court for, or an order is made for, the appointment of an administrator to manage the affairs, business and property of the Buyer; (c) a receiver is appointed over any of the Buyer's assets or undertakings; or (d) the Buyer makes any arrangement or composition with its creditors.
- 6.4 The Buyer may resell the Products before ownership has passed to it solely on the following conditions: (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and (b) any such sale shall be a sale of Novartis' property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer grants Novartis, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of sales are referred to per unit of the Product, excluding VAT. Applicable VAT shall be payable by the Buyer at the rate applicable on the date of the date of the relevant invoice. Unless otherwise agreed in writing between the Parties, the price shall be Novartis' list price as applicable at the date of shipment.
- 7.2 Novartis may invoice the Buyer at any time following the delivery of the Products, or where the Buyer wrongfully refuses to take delivery of the Products, after the Products have been notified as ready for delivery. All invoices shall be paid within thirty (30) days of the date of the invoice unless Novartis agrees otherwise in writing. Time for payment shall be of the essence. No payment shall be deemed to have been received until Novartis has received cleared funds.

- 7.3 All payments payable to Novartis under the Contract shall become due immediately on its termination despite any other provision. The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Novartis to the Buyer.
- 7.4 If the Buyer fails to pay Novartis any sum it shall pay interest on such sum from the due date at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB PLC accruing daily until payment is made.

8. WARRANTY

- 8.1 Novartis warrants that (subject to the other provisions of these conditions) at the time of shipment the Products shall conform to the requirements of the relevant product licence for the respective Product.
- 8.2 Novartis shall not be liable for a breach of the warranty in condition 8.1 unless the Buyer gives written notice of the defect to Novartis. If the defect is as a result of damage in transit to the carrier, notice must be given within two (2) business days of the time when the Buyer discovers or ought to have discovered the defect, provided always that no claim may be made with respect to any defect after twelve (12) months from delivery of the relevant Product. Novartis shall then be given a reasonable opportunity to examine the Products, however Novartis shall not be liable for such breach if: (a) the Buyer has used the Products after giving notice; or (b) the defect arose because the Buyer did not follow Novartis' instructions or good trade practice; or (c) the Buyer alters or repairs the Products without Novartis' written consent.
- 8.3 Subject to condition 8.2, if any of the Products do not conform with the warranty in condition 8.1 Novartis, may if it chooses, replace such Products or refund the price of such Products at the pro rata Contract rate in which case Buyer shall have no further claim against Novartis for such breach of warranty.
- 8.4 Except as agreed to in advance in writing by Novartis, Buyer shall not return Products to Novartis for any reason whatsoever.

9. LIMITATION OF LIABILITY

- 9.1 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 9.2 Subject to condition 4, condition 5 and condition 8, Novartis' total financial liability under the Contract shall be limited to the price of the Products paid by the Buyer to Novartis pursuant to the Contract. Neither party shall be liable to the other party for any pure economic loss, loss of profit, loss of business, loss of goodwill or otherwise, in each case whether direct, indirect or consequential or other claims for consequential compensation (howsoever caused) arising in connection with this Contract. Nothing in this condition 9.2 shall however affect applicable product liability law.

10. FORCE MAJEURE

Novartis reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Products ordered by the Buyer (without liability to the Buyer) if it is prevented from or hindered in the performance of the Contract due to circumstances beyond its reasonable control including, but not limited to, epidemic of disease, act of God, shortage of materials, war, labour disputes, accidents, fire, breakdown of machinery, influenza epidemic or pandemic, government requisition or impoundment or other acts of any governmental authority (including, without limitation, any regulatory authority), riot or civil commotion and any other acts, events or circumstances beyond Novartis' reasonable control whether or not similar in kind to the above causes; provided that, if the event in question continues for a continuous period in excess of ninety (90) days, the Buyer shall be entitled to give notice in writing to Novartis to terminate the Contract.

11. PACKAGING

The Products may only be resold in their original packaging. The Buyer may not change the packaging of any of the Products or remove, alter or tamper with any trade marks, trade names, labels, or numbers on the Products or alter the appearance of the Products or any packages in which the Products are packed.

12. CONFIDENTIALITY

The Buyer shall keep in strict confidence all information of a confidential nature which is or has been disclosed to the Buyer by Novartis or its agents and the Buyer shall restrict disclosure of such confidential information and/or material to such of its employees, agents or sub-contractors as need to know the same and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Buyer.

13. TERMINATION

Novartis shall have the right at any time by giving notice in writing to the Buyer to terminate the Contract forthwith if: (a) the Buyer commits a material breach of any of the terms and conditions of the Contract, or (b) the Buyer convenes a meeting of creditors, or enters into liquidation, or has a receiver or manager, administrator or administrative receiver appointed in respect of any part its undertaking, or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, or (c) the Buyer ceases to carry on its business.

14. GENERAL

- 14.1 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.2 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the courts of England and Wales.
- 14.3 The failure to exercise or delay in exercising a right or remedy provided by these conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. The invalidity or unenforceability of any of the Contract provisions shall not affect the remainder of the Contract.

15. COMMUNICATIONS

All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax to each of the parties as set out on the Order Form or otherwise in the Contract.