

## 1. Applicable terms

1.1 These terms and conditions exclusively govern the commercial sale by Pharmaxis Ltd ABN 75 082 811 630 (**Pharmaxis**) of all products or services rendered to its customers. Pharmaxis excludes any other terms and conditions not contained in this document. No addition or modification will be binding on Pharmaxis unless Pharmaxis expressly agrees to vary these terms and conditions in writing.

1.2 These terms and conditions may be varied by Pharmaxis from time to time at its discretion. The customer accepts and is bound by changed terms in respect of all purchases of products after the date of the change.

## 2. Prices

2.1 Unless otherwise agreed, prices appearing in price lists and other documents are x Works (on an Incoterms 2010 basis) from Pharmaxis' premises in Sydney, Australia in Australian dollars and are exclusive of GST unless otherwise expressly stated. Any training costs, delivery costs and any applicable taxes, duties, insurances, charges and other imposts are not included in quoted prices unless otherwise stated.

3.2 Pharmaxis reserves the right to change its prices at any time, and may do so with written notice or by updating its price lists on its website.

2.3 Pharmaxis will not be bound by clerical errors or omissions whether in computation or otherwise in any price list, acknowledgment, invoice or other communication.

## 3. Payment

3.1 Payment must be made in full by the customer to Pharmaxis within 30 days of the date of invoice, without reduction or deferment on account of any claim, counterclaim or set-off. Payment must be made in the currency invoiced.

3.2 Pharmaxis reserves the right to charge interest on any overdue amounts at a rate equal to the Commonwealth Bank of Australia's 90-day bank bill rate plus 2% per annum from the due date of the amount until payment in full. If any amount becomes overdue, all amounts recorded on the customer's account are deemed to be immediately due and payable. The customer must pay all costs and expenses which may be incurred by Pharmaxis in the attempted recovery of the overdue amounts.

3.3 In the event of late payment, Pharmaxis may, at its discretion, suspend or cancel future deliveries of product. This will not prevent recourse to other rights or remedies available to Pharmaxis.

3.4 Until payment in full is received by Pharmaxis, the title in all the goods supplied by Pharmaxis remains with Pharmaxis and the customer holds the goods only as bailee for Pharmaxis and the customer must safely and securely store the products accordingly.

## 4. Delivery

4.1 Delivery is taken to occur and risk of loss or damage to the products passes to the customer Ex Works when the products are placed at the customer's disposal at Pharmaxis' premises in Sydney, Australia. Pharmaxis recommends that the customer elects to take up suitable insurances, at the customer's cost, against the risk of damage, loss or theft of the products.

4.2 If at the request of the customer, Pharmaxis arranges for carriage of the products for the customer, it will only do so on the basis that delivery will occur and risk will pass Ex Works when the products are placed at the carrier's disposal. The customer must reimburse Pharmaxis for any costs or expenses incurred in connection with the carriage of the products unless otherwise agreed in writing.

4.3 Any order made by the customer is subject in each case to the approval and acceptance by Pharmaxis and is conditional upon the proposed delivery date sought being acceptable to Pharmaxis and Pharmaxis having the ability to supply sufficient quantities of the relevant product. The customer acknowledges that any agreed or stated delivery period is indicative only. Pharmaxis will not be responsible for any loss or damage of any kind (whether direct, indirect or consequential) arising from Pharmaxis rejecting any order or any delay in the delivery of the products.

4.4 The customer may cancel or reduce an order by giving written notice to Pharmaxis. An order may not be cancelled or reduced after it has been dispatched by Pharmaxis. An order cancellation or reduction fee will apply if the order is cancelled or reduced within 14 days prior to dispatch. The customer indemnifies Pharmaxis against all reasonable costs and expenses arising from the cancellation or reduction of products.

4.5 The products are deemed to be accepted by the customer Ex Works and are taken to be free from defects and correct products as ordered. The customer must within 14 days from the products being placed at the customer's or carrier's disposal (as applicable) at Pharmaxis' premises, undertake a visual inspection and give notice in writing to Pharmaxis if the customer has identified that the products delivered were not the products ordered or that there are defects with the products (excluding damage or other issues arising from the transport and delivery of the products). If the customer gives such notice, Pharmaxis may agree to the return of the

relevant products if Pharmaxis agrees that the products were not the products ordered or there were defects with the products (other than from damage or other issues arising from the transport and delivery of the products). If Pharmaxis agrees to the return of the products the subject of such notice from the customer, it will issue a returned goods authorisation and will, at its option, replace the relevant products or refund the applicable money paid by the customer in respect of the relevant products. If the customer does not give such notice, the customer is deemed to have accepted the products and will be required to pay for them accordingly.

## 5. Title

5.1 Property and title in the products supplied by Pharmaxis to the customer will not pass to the customer until such time as the goods supplied by Pharmaxis to the customer have been paid for in full.

5.2 Subject to the Personal Property Securities Act 2009 (Cth) (**PPSA**), until such time as the goods have been paid for in full the customer is at liberty to use or sell the goods in the ordinary course of its business, and the customer shall hold the proceeds thereof in trust for Pharmaxis and promptly account to Pharmaxis for those proceeds in payment of the purchase price for the goods.

5.3 The customer and Pharmaxis agree that the provisions of this clause apply notwithstanding any agreement between the parties under which Pharmaxis grants the customer credit.

## 6. Warranties

6.1 Pharmaxis warrants that at the time of the products being made available at the customer's disposal, the product will be in compliance with the relevant product specifications in effect at the time the product was dispatched.

6.2 The products supplied by Pharmaxis: (a) must only be used for the intended purpose; (b) must be used and stored in accordance with the instructions and directions provided by Pharmaxis or otherwise in accordance with all directions of Pharmaxis and all applicable laws, regulations, guidelines and proper professional standards; (c) must be used within the shelf life as may be advised by Pharmaxis; (d) are subject to the precautions and warnings provided with the products.

6.3 The warranty provided in clause 6.1 will be void if the product has been misused, neglected, improperly handled or stored, modified or altered or if the product is not used strictly in accordance with the instructions for use of the product or are used for a purpose other than the specific indications for use of the product or if the product are used after their use before date.

## 7. Exclusion of warranties

7.1 Other than the warranty provided in clause 6.1 of these terms and conditions, Pharmaxis has not made any and, subject to the following provisions of this clause, excludes all warranties, terms, conditions or undertakings, whether expressed or implied, written or oral, statutory or otherwise including any implied warranty of merchantability, accuracy, safety or fitness for a particular purpose, in respect of the products.

7.2 To the maximum extent permitted by applicable laws, any conditions or warranties imposed by legislation or statute are hereby excluded and insofar as liability under or pursuant to such legislation or statute may not be excluded, such liability and any other liability arising under or in connection with the products or these terms and conditions is limited, at the exclusive option of Pharmaxis, to the replacement or the supply of equivalent applicable products or the payment of the cost of replacing or of acquiring equivalent applicable products.

7.3 The customer releases Pharmaxis and its officers, employees and agents from, and indemnifies Pharmaxis and its officers and employees against any costs claims, expenses, charges, losses, damages, penalties and liabilities of any kind incurred out of or in connection with the customer's use or sale of the products, except to the costs claims, expenses, charges, losses, damages, penalties and liabilities arises out of a failure of the product to meet the warranties provided by Pharmaxis by law or expressly in these terms and conditions.

## 8. Limitation of Liability

8.1 Neither party shall be liable to the other for loss of profit, income or saving or for any indirect, consequential or special damages regardless of whether the liability is based on a claim for negligence, indemnity, breach of contract, tort, misrepresentation or any other basis.

8.2 In no event shall Pharmaxis' liability under these terms and conditions or any transaction contemplated by these terms and conditions exceed, at the option of Pharmaxis, the replacement of the products or supply of equivalent products or the payment of the purchase price for the products in question. Without limiting the foregoing, Pharmaxis' maximum liability, if any, shall not exceed the purchase price paid by the customer for the products. The customer hereby releases Pharmaxis from all obligations, liability, claims or demands in excess of the limitation.

8.3 Neither party shall be in default hereunder by reason of any failure or delay in the performance of any obligation under these terms and conditions by reason of force majeure.

## **9. Intellectual Property**

9.1 Pharmaxis retains all intellectual property rights, in any products and services which it provides and all progeny and unmodified derivatives thereof.

9.2 No license or immunity under any patent is either granted or implied by the sale of any of our products.

9.3 Pharmaxis does not warrant that the use or resale of its products delivered will not infringe the claims of any patents, trademarks or copyright covering use of the product itself, or its use in combination with any other products, or its use in the operation of any process. Furthermore, the customer assumes all risks of patent, trademark or copyright infringement associated with any such use, combination or operation.

## **10. PPSA**

The terms "Collateral", "Debtor", "Financing Change Statement", "Financing Statement", "Grantor", "Proceeds", "Secured Party", "Security Agreement" and "Security Interest" have the meanings given in the Personal Property Securities Act 2009 (Cth).

10.1 Pharmaxis may refuse to sell or supply product to the customer until the customer provides all details and data needed to register a "Financing Statement" or "Financing Change Statement" under the PPSA with respect to any Security Interest the subject of these terms and conditions.

10.2 If the customer makes any payment to Pharmaxis, Pharmaxis may apply the payment to satisfy any obligation of the customer to Pharmaxis (whether unsecured, secured by Security Interest, or secured by purchase money security interest). Pharmaxis may: (a) apply the payment in any order or manner that it (in its absolute discretion) thinks fit; and (b) amend or re-apply any application made.

10.3 Sections 95, 121(4), 125, 130, 132(3)(d), 132(4), and 135 of the PPSA are excluded and contracted out of to the full extent permitted by section 115 of the PPSA. The customer waives the right under PPSA section 157 to receive a notice in relation to registration events which relate to collateral described in the registration as commercial property.

10.4 This clause 10 will survive the termination of the contract to the extent permitted by law.

## **11. General**

11.1 Any provision in these terms and conditions which is or may become illegal, invalid or unenforceable in any jurisdiction affected by these terms shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be severed from the balance of these terms and conditions without invalidating the remaining provisions.

11.2 These terms and conditions do not create any other relationship between Pharmaxis and the customer, including any relationship of partnership, agency, trust, joint venture or otherwise.

11.3 These terms and conditions will be governed and construed in accordance with the laws in force in New South Wales, Australia and each party submits to the exclusive jurisdiction of the courts of NSW and courts of appeal therefrom.

11.4 As part of our normal operations we may collect customer information. Please refer to the privacy statement on our website. Pharmaxis may, from time to time, review and update its privacy statements to take account of new laws and technology and changes to our operations. Pharmaxis collects a range of information from customers and members of the public. We may store and disclose personal information allowed or required by applicable law or when deemed advisable by us. This means that we may make disclosures that are necessary or advisable to conform to legal and regulatory requirements or processes and to protect the rights, safety and property of Pharmaxis, its customers, and the public. Pharmaxis will endeavour to take all reasonable steps to keep secure any information which we hold about you.