

BCM Specials Ltd Conditions of Sale

5.5 Provided that the Product has been properly stored and transported in accordance with the transport and storage guidelines, where a Latent Defect, in a Product becomes apparent to the Buyer before the expiry date of that Product, the Buyer shall notify BCM Specials within three (3) working days of discovering the Latent Defect and provide details of

the Latent Defect and how and when it was discovered. The Buyer shall return such Product having Latent Defect within two (2) working days of notifying BCM Specials

5.6 The fully Products and/or packaging will be forwarded to BCM Specials Customer Services Department for investigation. Where BCM Specials determines that the Latent Defect in the Product is due to BCM Specials handling or manufacture of Product then BCM Specials will provide the Buyer with replacement Product or credit or refund in accordance with the Buyer's requirements.

6. Limitation Of Liability

6.1 Subject to Condition 4, the following provisions set out BCM Specials' entire financial liability (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

6.1.1 Any breach of any Contract incorporating these Conditions; and

6.1.2 Any representation, statement or tortious act or omission involving negligence arising under or in connection with any Contract.

6.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from any Contract.

6.3 Nothing in these Conditions excludes or limits the liability of BCM Specials for death or personal injury caused by BCM Specials negligence, or for fraudulent misrepresentation.

6.4 Without prejudice to conditions 4.4 and 4.6 above:

6.4.1 BCM Specials' total liability in respect of any breach of these Conditions or any representation, statement or tortious act or omission including negligence arising under or in connection with the performance or contemplated performance of any Contract shall be limited to the Contract price; and

6.4.2 BCM Specials shall not be liable to the Buyer for any loss of profit, loss of business, loss of revenue, depletion of good-will or any indirect or consequential loss or damage, costs, expenses whatsoever (howsoever caused) which arise out of or in connection with a Contract.

7. Delivery

7.1 Any date or period for delivery or any rate of delivery stated in any Contract is intended by BCM Specials and accepted by the Buyer as being an estimate only not giving rise to contractual obligations. The Buyer shall not be entitled to rescind a Contract or reject any Products or claim damages or interest of any kind.

7.2 Delivery shall take place when the Products are unloaded at the Buyers' premises.

8. Risk/Title

8.1 Risk in Products shall pass to the Buyer upon delivery to the Buyer.

8.2 Title in the Products shall not pass to the Buyer until BCM Specials has received in full all sums due in respect of the Goods and Services.

9. Product Recall and Adverse Event Reporting

9.1 In the event that BCM Specials recalls any Products, BCM Specials will give instructions at the time of Product recall on the procedure for returning any Products

9.2 In order that BCM Specials can comply with its obligations under UK regulations applicable to Specials, the Buyer undertakes that it will itself and shall procure that any registered doctor or dentist supplied with Products by the Buyer for its agent will:

9.2.1 Notify BCM Specials;

9.2.1.1 Immediately of any serious adverse drug reaction relating to the Product; or

9.2.1.2 promptly within two (2) working days of the incident, of any suspected adverse drug reaction relating to the Product, together with details of the adverse reaction and such other information as may be necessary to enable BCM Specials to file an appropriate report and notification with the relevant regulatory authorities.

9.2.2 Upon request by BCM Specials immediately cease all use and prescription of any Product and notify all persons issued or prescribed with the Products to immediately cease all use of such Products and return them to BCM Specials where it is known or reasonably suspected that such Products are defective or unsafe;

9.2.3 co-operate with BCM Specials at all times in connection with monitoring the safety and performance of the Products and recalling any Products pursuant to this clause 9.

10. Warranties

10.1 BCM Specials warrants to the Buyer that:

10.1.1 the Products shall be manufactured and marketed in accordance with any applicable regulation or requirement in the UK and shall be properly packed using reasonable care and skill to take reasonable steps to minimise any damage during transport;

10.1.2 in respect of Products supplied under each Contract, BCM Specials will have, as applicable, the relevant Manufacturer's License and/or Wholesale Dealers License relevant for that Product.

10.2 The Buyer warrants to BCM Specials:

10.2.1 that the Buyer is authorised to order Products from BCM Specials (being a (i) doctor or dentist registered in the UK (ii) supplementary prescriber (iii) a pharmacist in a hospital healthcare centre or a registered pharmacy or (iv) a registered veterinary practitioner or (v) a licensed wholesale dealer who is permitted to supply to any of (i) to (iv) above;

1. Definitions

In these Conditions the following words shall have the following meanings:

BCM Specials: BCM Specials Limited;

Buyer: the company, organisation or individual to whom BCM supply product to

Contract/Any Order accepted by BCM Specials

Products: Specials or licensed medicinal products supplied in response to a bona fide unsolicited order, formulated in accordance with the specification of a prescriber for use by his / her individual patients on his direct personal responsibility

Order: The Buyer's written instruction to BCM Specials to supply the Products or the Services

Services: Any services agreed in a Contract to be provided by BCM Specials to the Buyer.

Latent Defect: A concealed defect in the Product which could not have been reasonably identified at the time of supply of the Product.

2. General

2.1 All Contracts will be subject to these Conditions to the exclusion of any different terms and conditions issued by the Buyer, except in so far as BCM Specials and the Buyer may have otherwise agreed in writing.

2.2 If any provision, clause or application of these Conditions shall be held unlawful or invalid by any court or administrative decision such provision, clause or application shall be deemed severable and such unlawfulness or invalidity shall not in any way affect any other provisions, clauses or applications of these Conditions.

2.3 These Conditions (and documents or agreements referred to herein) set out the entire terms of the agreement between the parties in relation to the supply of Products or Services pursuant to any Contract and supersede all preliminary correspondence, discussions and negotiations, undertakings and arrangements and cancel all previous printed conditions issued by BCM Specials for the sale of Products or services in the United Kingdom and no alteration of or to these Conditions or any Contract shall be effective unless agreed by both parties in writing.

2.4 The Buyer will be responsible for ensuring the Order relating to a Product is accurate with respect to the prescription or specification issued by the prescriber and for checking that the Products supplied by BCM Specials conform to the prescription received by the Buyer. The Buyer agrees to pay for any Products supplied by BCM Specials which have been made to comply with the details set out on the Order provided by the Buyer.

3. Price

3.1 BCM Specials does not bind itself to accept any Order and reserves the right to alter the price of the Products or Services without notice at any time before its acceptance of an Order.

3.2 Unless otherwise notified by BCM Specials in writing, the price for the Products or Services shall be the price on the date of acceptance of an Order.

3.3 The price quoted for the Products or Services shall be exclusive of any value added tax.

4. Payment

4.1 Payment must be made by the Buyer by the date specified on the invoice or before the expiry of thirty (30) days after the last day of the month in which the invoice is issued.

4.2 No extension of credit in excess of this period is permitted.

4.3 All Products and Services are supplied on condition that the amount due for VAT or any other applicable tax payment on the Products or Services must accompany payment for them.

4.4 All sums due which are not paid by the due date will bear daily interest at a rate of eight (8%) above The Bank of England base rate.

4.5 If any sum remains unpaid after the due date then payment for all Products and Services previously supplied no matter how recently and whether under the same or separate contracts, shall become due immediately.

5. Returns

5.1 Products will not be accepted for returns except where (i) the Products or packaging at the time of Delivery were faulty, or (ii) the Product has a large Latent Defect that has arisen solely due to BCM Specials negligence or on failure to manufacture Product according to the applicable standards for the Product.

5.2 In order to benefit from this returns policy, the Products must, from the time of delivery, have always been stored and transported in accordance with the applicable transport and storage guidelines and not have been used, unsealed, marked, over labelled, changed or interfered with in any way whatsoever.

5.3 Defective Product (excluding Latent Defects)

5.3.1 Where the Products are returned as a result of faulty Product (other than Latent Defects) and/or packaging the Buyer must:

5.3.1.1 contact BCM Specials Customer Services Department within three (3) working days of Delivery to notify BCM Specials of the defect, including details of the defect and quantity of Product affected and request instruction for the return of such Product and/or packaging

5.3.2 store and transport the Product in accordance with the transport and storage guidelines

5.3.3 not mark, damage, interfere with or alter the returned Products in any way, and

5.3.4 return the Products together with their packaging within two (2) working days of the notification pursuant to clause 4.4

5.4 The fully Products and/or packaging will be forwarded to BCM Specials Customer Services Department for investigation. Where BCM Specials determines that the Product is defective and such defect is due to BCM Specials handling or manufacture of Product, then BCM Specials will provide the Buyer with replacement Products or credit or refund in accordance with the Buyer's requirements.

Latent Defects

10.2.2 that the Buyer acknowledges and understands that all Specials supplied under each Contract are unlicensed medicinal products bearing their own inherent risks and the Buyer will itself and will procure that any registered doctor, dentist or supplementary prescriber supplied with Specials by Buyer (or its agent) will notify the Buyer that the Product is a Special and explain the consequences and associated risks of that status;

10.2.3 that it will store and transport the Products in accordance with the notified transport and the storage requirements, will immediately destroy any Products as it expires, and will act with due care not to jeopardise the safety of a user of the Products;

10.2.4 that it will monitor the safety of the Products and comply with the obligations as set out in clause 8 and maintain and provide for a period not less than seven (7) years all documentation relating to the Product for the primary purpose being able to trace the Product from delivery through to (and including) use by the patient.

11. Carriage

Unless otherwise specified by BCM Specials Products will be delivered by BCM Specials at the Buyers cost to the Buyers premises or to an address provided by the Buyer in the United Kingdom

12. Confidentiality

Both Parties will keep the terms of any Contract and all the other information marked or identified as confidential at the time of disclosure strictly confidential and will not use such information or disclose it to any third party except for the purposes of that Contract or as required by law.

13. Exports

No Products may be exported unless the Buyer has the necessary licenses and consents from applicable regulatory authorities. No Products supplied to the Buyer may be sold for use or consumption outside the member states of the EEA without BCM Specials prior written consent.

14. Cancellation

The Buyer shall have no right in any circumstances to cancel a Contract or any instalment or Order which has been accepted by BCM Specials without BCM Specials' prior written consent.

15. Set Off

15.1 All payments made by the Buyer under a Contract shall be made in full without any set off or counterclaim.

15.2 Without prejudice to any of its other rights or remedies, BCM Specials shall be entitled to set off any sums due to the Buyer against any sums due to BCM Specials under the Contract or any other agreement or account, including the right, whenever any sum is payable to the Buyer by BCM Specials under any other agreement or account, to reduce the amount payable by the amount of any sum due from the Buyer to BCM Specials under the Contract.

16. Termination

BCM Specials shall be entitled, without prejudice to its other rights and remedies, to cancel a Contract in whole or in part or to suspend deliveries thereunder if the Buyer is in breach of any term of any Contract or becomes insolvent or being a body corporate has a receiver appointed or passes a resolution for winding up or a Court makes an order to that effect or an individual or partnership makes any composition or arrangement with its or their creditors or has a receiving order made against him or them. Upon termination of a Contract by BCM Specials the Buyer grants to BCM Specials an irrevocable licence to use its trade mark or such other intellectual property rights as may be required without payment and without time limit to sell any Products manufactured by BCM Specials for which the full purchase price has not been received.

17. Force Majeure

If BCM Specials is delayed or hindered in or prevented from performing any of its obligations under a Contract by reason of Act of God, fire, flood, accident, explosion, breakdown or failure of plant or machinery, labour dispute, acts or regulations of Government, shortage of material or fuel or labour or transport or by reason of any cause whether or not of the same nature as the foregoing beyond its reasonable control, it shall be under no liability to the Buyer in respect of the non-performance of such obligations but the time for performing the same shall be extended until the operation of the causes preventing hindering or delaying the performance thereof has ceased.

18. Assignment

No Contract shall be assigned by the Buyer without BCM Specials' prior written consent.

19. Proper Law

The construction, validity and performance of all Contracts shall be governed by English law and subject to the non-exclusive jurisdiction of the English courts.

20. Dispute Resolution

20.1 In the event that a dispute arises regarding the services covered by this agreement or regarding other matters, the senior management of the quality departments from both companies will in good faith promptly attempt to resolve disputed issues. In the event that senior management fail to resolve disputes the agreement should be made subject to the non-exclusive jurisdiction of the English Courts.

20.2 This agreement will be interpreted in accordance with the laws of England and Wales.