

NORGINE PHARMACEUTICALS LIMITED

CONDITIONS OF SALE OF GOODS

1 Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.
"Contract"	the contract between Norgine and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
"Customer"	the person, firm or company who purchases the Goods from Norgine.
"Distribution partner"	Means DHL Supply Chain Cherwell 3 Brookhill Way Banbury OX16 3ED Telephone number: 01295 228813 Fax number: 01295 228826 Email address: DHLUKNorgine@dhl.com
"Force Majeure Event"	has the meaning given in clause 10.
"Goods"	the goods (or any part of them) set out in the Order.
"Order"	the order by the Buyer for the Goods, as set out in the purchase order form of the Buyer.
"Specification"	any specification for the Goods as may be set out in the price list.
"Supplier"	Norgine Pharmaceuticals Limited (registered in England and Wales with company number 03527131).

1.2 **Construction.** In these Conditions, the following rules apply:

- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute

or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and e-mails.

2 Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer shall ensure that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.

2.3 Certain Goods are supplied in minimum unit sizes. These Goods will only be supplied as multiples of these minimum sizes and where necessary Norgine reserves the right to alter Orders and to invoice the Buyer accordingly so that this condition is met.

2.4 The Order shall only be deemed to be accepted when the Goods are delivered by the Distribution Partner, at which point the Contract shall come into existence.

2.5 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Norgine which is not set out in the Contract.

3 Goods

3.1 The Goods are described in the price list of Norgine.

3.2 Norgine reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

4 Delivery

4.1 Norgine shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Supplier shall deliver the Goods, at the delivery location agreed between the parties in writing ("**Delivery Location**").

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location (where the Delivery Location is somewhere other than Norgine's premises).

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Norgine shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the failure of the Buyer to provide Norgine with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 Any damage to the Goods or discrepancy in the quantity of Goods delivered from the quantity of Goods ordered shall (whether or not delivery is refused by the Buyer) be notified to Norgine or the Distribution Partner within 3 days after discovery of the damage or discrepancy. If delivery is not refused, and the Buyer does not notify

Norgine accordingly, the Buyer shall not be entitled to reject the Goods and Norgine shall have no liability for such damage or discrepancy, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 4.6 Norgine may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5 Quality

- 5.1 Subject to clause 5.2, Norgine warrants that on delivery, and for a period of 6 months from the date of delivery, (**warranty period**), the Goods shall:

- 5.1.1 conform with any English regulatory authorisation applicable to them;
- 5.1.2 comply with mandatory standards imposed on them under English law;
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 Any claim by the Buyer which is based on any defect in the quality or fitness for purpose of the Goods or their failure to correspond with Specification shall (whether or not delivery is refused by the Buyer) be notified to Norgine or the Distribution Partner within 5 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Norgine accordingly, the Buyer shall not be entitled to reject the Goods and Norgine shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

- 5.3 Subject to clause 5.4, if:

- 5.3.1 the Buyer gives notice in writing to Norgine during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and
- 5.3.2 Norgine is given a reasonable opportunity of examining such Goods; and
- 5.3.3 the Buyer (if asked to do so by Norgine) returns such Goods to the place of business of Norgine at the cost of Norgine,

Norgine shall, at its option, replace the defective Goods, or refund the price of the defective Goods in full.

- 5.4 Norgine shall not be liable for failure of the Goods to comply with the warranty set out in clause 5.1 in any of the following events:

- 5.4.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.3; or
- 5.4.2 the defect arises because the Buyer or its customer failed to follow the oral or written instructions of Norgine as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
- 5.4.3 the Buyer alters such Goods without the written consent of Norgine; or
- 5.4.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- 5.4.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.5 Except as provided in this clause 5, Norgine shall have no liability to the Buyer in respect of the failure of the Goods to comply with the warranty set out in clause 5.1.
- 5.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Goods supplied by Norgine.

6 Title and risk

- 6.1 The risk in the Goods shall pass to the Buyer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Buyer until Norgine has received payment in full (in cash or cleared funds) for the Goods;
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 6.3.1 hold the Goods on a fiduciary basis as the bailee of Norgine;
 - 6.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the property of Norgine;
 - 6.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.5 notify Norgine immediately if it becomes subject to any of the events listed in clause 8.2; and
 - 6.3.6 give Norgine such information relating to the Goods as Norgine may require from time to time,but the Buyer may resell or use the Goods in the ordinary course of its business.
- 6.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 8.2, or Norgine reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Norgine may have, Norgine may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7 Price and payment

- 7.1 The price of the Goods shall be Norgine's quoted price, or, if no price is quoted, the price set out in the published price list of Norgine in force as at the date of delivery.
- 7.2 The price of the Goods is inclusive of the cost of delivery to the Customer.
- 7.3 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Buyer shall, on receipt of a valid VAT invoice from Norgine, pay to Norgine such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.4 Norgine may invoice the Buyer for the Goods on or at any time before or after the completion of delivery.

- 7.5 The Buyer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by Norgine. Time of payment is of the essence.
- 7.6 If, in the opinion of Norgine, the credit-worthiness of the Buyer shall have deteriorated prior to delivery, Norgine may require full or partial payment of the price prior to such delivery or the provision of security for payment by the Buyer in a form acceptable to Norgine.
- 7.7 If the Buyer fails to make any payment due to Norgine under the Contract by the due date for payment (**due date**), then without affecting Norgine's other rights and remedies:
- 7.7.1 Norgine may suspend any further deliveries to the Buyer, whether under the same or any other Contract; and
- 7.7.2 the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank plc from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 7.8 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against Norgine in order to justify withholding payment of any such amount in whole or in part. Norgine may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Norgine to the Buyer.

8 The Buyer's insolvency or incapacity

- 8.1 If the Buyer becomes subject to any of the events listed in clause 8.2, or Norgine reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to Norgine, Norgine may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and Norgine without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- 8.2.1 the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 8.2.2 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- 8.2.3 (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- 8.2.4 a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or

enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

- 8.2.5 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
 - 8.2.6 (being a company) a floating charge holder over the assets of the Buyer has become entitled to appoint or has appointed an administrative receiver;
 - 8.2.7 a person becomes entitled to appoint a receiver over the assets of the Buyer or a receiver is appointed over the assets of the Buyer;
 - 8.2.8 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.7 (inclusive);
 - 8.2.9 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - 8.2.10 the financial position of the Buyer deteriorates to such an extent that in the opinion of Norgine the capability of the Buyer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9 Limitation of liability

- 9.1 Nothing in these Conditions shall limit or exclude the liability of Norgine for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - 9.1.2 fraud or fraudulent misrepresentation; or
 - 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 9.1.4 any other matter in respect of which it would be unlawful for Norgine to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
- 9.2.1 Norgine shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 9.2.2 the total liability of Norgine to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

10 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including

strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11 General

11.1 Assignment and subcontracting.

Norgine may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.2 Notices.

11.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.

11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

11.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

11.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

11.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by Norgine.

11.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.