

Terms and conditions for Ferndale Pharmaceuticals Ltd and AesthetiCare[®], a division of Ferndale Pharmaceuticals Ltd

- 1. INTERPRETATION**
- 1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Acknowledgement of Order: a written acknowledgement of order, invoice or delivery note produced by the Company.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: Ferndale Pharmaceuticals Limited, a company registered in England and Wales with company number 4720051 whose registered office is at 12 York Place, Leeds, West Yorkshire LS1 2DS and its business division AesthetiCare[®]

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Force Majeure Event: has the meaning given in condition 12.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Insolvency Event: has the meaning given in condition 6.5.

Order: the Buyer's order for the Goods.
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular. Condition headings do not affect the interpretation of these conditions.
- 1.4 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.
- 1.5 A reference to a person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality). A reference to one gender includes a reference to the other gender. A reference to a party includes its personal representatives, successors or permitted assigns. A reference to writing or written includes faxes and emails.
- 2. APPLICATION OF TERMS**
- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document) or which are implied by trade, custom, practice or course of dealing.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 The Contract constitutes the entire agreement between the parties and these conditions apply to all the Company's sales. No variation to these conditions or any representation about the Goods shall have effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company, which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each Order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No Order placed by the Buyer shall be deemed to be accepted by the Company until an Acknowledgement of Order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its Order and any applicable specification are complete and accurate and the Company shall be entitled to rely upon such Order and/or specification in the fulfilling any Order.
- 2.7 A quotation for the Goods given by the Company shall not constitute an offer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it or stated otherwise in writing.
- 3. DESCRIPTION**
- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation as confirmed in the Acknowledgement of Order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and shall not be considered as samples for the purposes of any Contract.
- 3.3 The Company reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 4. DELIVERY**
- 4.1 The Company shall deliver the Goods to the location set out in each Order or such other location as the parties may agree ("**Delivery Point**"). The Goods will normally be delivered within fourteen (14) Business Days, unless specified otherwise by the Company, following receipt of an Order, upon acceptance of a quotation for Goods by the Buyer from the Company, within an Acknowledgement of Order by the Company ("**Delivery Date**").
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Point.
- 4.3 Any dates specified by the Company for delivery of the Goods are approximate and are intended to be an estimate only. Time for delivery shall not be of the essence and shall not be made of the essence by notice. If no date for delivery is agreed, delivery shall be within a reasonable time.
- 4.4 Where the Company has failed to deliver the Goods within 30 days of the Delivery Date, as its sole and exclusive remedy for such delay the Buyer shall be entitled to terminate or rescind the Contract and claim for a full refund from the Company of full or partial payments made by the Buyer in relation to the Contract save where the Company has not been able to deliver the Goods as a result of a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 Subject to the other provisions of these conditions, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence).

- 4.6 If for any reason the Buyer fails to accept delivery of any of the Goods upon the arrival of the Goods at the Delivery Point, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) the Goods shall be deemed to have been delivered at 9am on the Business Day after the Delivery Date ("**Deemed Delivery Date**"); and
 - (b) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7 If 10 Business Days after the Deemed Delivery Date the Buyer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall below the price of the Goods and any reasonable storage and selling costs.
- 4.8 The Buyer shall be responsible (at its own expense) for unloading the Goods at the Delivery Point and providing appropriate equipment and manual labour for unloading the Goods.
- 4.9 If the Company delivers to the Buyer a quantity of Goods of up to 5% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for any such additional goods by way of a pro rata adjustment to the invoice for the relevant Order.
- 4.10 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 4.11 Each instalment shall be a separate Contract and no delay in delivery, defect in an instalment or 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 Goods as recorded by the Company on despatch from the Company's 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 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6. RISK/TITLE**
- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Subject to condition 6.4, until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company;
 - (e) notify the Company immediately if it becomes subject to any Insolvent Event; and
 - (f) give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4 The Buyer may resell the Goods 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 the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if the Buyer suffers an Insolvency Event. For the purposes of these conditions, the Buyer shall be deemed to have suffered an Insolvency Event if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), 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
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods; or
 - (d) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
 - (e) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in condition 6.5, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, without limiting any other right or remedy the Company may have, the Company 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.

- 6.8 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.9 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 6.10 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination and any conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 7. PRICE**
- 7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's quotation for the Goods and confirmed in the Company's Acknowledgement of Order, or, if no such price is quoted, the price set out in the Company's published price list in force as at the date of delivery.
- 7.2 The Company may invoice the Buyer for the Goods on or at any time after the date of despatch of the Goods by the Company or as otherwise specified by the Company to the Buyer in relation to any given Order
- 7.3 The Company may, by giving notice to the Buyer at any time up to 14 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the specification for the Goods; or
 - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.
- 7.4 The price of the Goods shall be exclusive of amounts in respect of value added tax (**VAT**). The Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.5 The price of the Goods shall be ex-works and the Company shall be entitled to charge a delivery fee as notified to the Buyer by the Company from time to time.
- 8. PAYMENT**
- 8.1 Subject to condition 8.4, the Customer shall pay any invoice due to the Company in full and cleared funds in pounds sterling (GBP) within 30 days of the date of the invoice for the Goods or as agreed otherwise by the parties. Payment shall be made to the bank account nominated in writing by the Company.
- 8.2 Time for payment shall be of the essence.
- 8.3 No payment shall be deemed to have been received until the Company has received payment in full in cleared funds.
- 8.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 8.5 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 the Company in order to justify withholding payment of any such amount in whole or in part. The Company 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 the Company to the Buyer.
- 8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Buyer shall pay the interest together with the overdue amount.
- 9. QUALITY**
- 9.1 The Company warrants that (subject to the other provisions of these conditions) upon delivery, or as otherwise specified in writing by the Company or manufacturer in relation to specific Goods, the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979
 - (b) be fit for purpose as specified in writing by the Company or Manufacturer with respect to the specific Goods
- 9.2 Subject to conditions 9.3 and 9.4, if:
- (a) the Buyer gives notice in writing to the Company within 7 days of delivery that some or all of the Goods do not comply with the warranties set out in condition 9.1;
 - (b) the Company is given a reasonable opportunity of examining such Goods; and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost
- the Company shall, at its option, repair or replace the defective Goods (or the defective part), or refund the relevant pro-rated proportion of the price of the defective Goods.
- 9.3 The Company shall not be liable for any defect which has arisen as the result of damage which has occurred to the Goods whilst in transit to the Buyer unless the Buyer gives written notice to the Company in accordance with condition 9.2 within 7 days of the earlier of the time when the Buyer discovers or ought to have discovered the defect.
- 9.4 The Company shall not be liable for Goods' failure to comply with the warranties set out in condition 9.1 in any of the following events:
- (a) the Buyer makes any further use of such Goods after giving notice in accordance with condition 9.2;
 - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of the Company following any specification supplied by the Buyer;
 - (d) the Buyer alters or repairs such Goods without the written consent of the Company;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence by Buyer, or abnormal storage or working conditions; or
 - (f) the Goods differ from their description or the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.5 Except as provided in this condition 9, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranties set out in condition 9.1.
- 9.6 Except as set out in the Contract, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.7 The Contract shall apply to any repaired or replacement Goods supplied by the Company.
- 10. LIMITATION OF LIABILITY**
- 10.1 Nothing in these conditions or the Contract excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - (b) for breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (c) under section 2(3), Consumer Protection Act 1987; or
 - (d) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (e) for fraud or fraudulent misrepresentation.
- 10.2 Subject to condition 10.1:
- (a) the Company 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 (whether direct or indirect), loss of business, depletion of goodwill, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Company's total liability 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 paid by the Buyer for the Goods under the Contract.
- 11. ASSIGNMENT**
- 11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12. FORCE MAJEURE**
- The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) and shall not be liable for any failure or delay in performing its obligations under the Contract if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event. A Force Majeure Event means any event or circumstance beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, breakdown of plant or machinery, failure or energy sources or transport networks, default of suppliers or subcontractors, lock-outs, strikes or other labour disputes (whether or not relating to the Company's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 80 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 13. GENERAL**
- 13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 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 a director of the Company.
- 13.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.6 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.
- 13.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 14. COMMUNICATIONS**
- 14.1 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:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of Roger Bloxham.
- 14.4 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

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