

# The Company Conditions of Sale

## 1. The Conditions

Orders are accepted by the Company on the basis that these conditions (as may be amended in writing by an authorised representative of the Company) shall take precedence over any other terms of conditions. The Company may use its pre-wholesaler, Alloga UK, to discharge any of its obligations under these terms and conditions.

## 2. Orders

- 2.1. The Order constitutes an offer by the Customer to purchase Goods subject to and incorporating these Conditions.
- 2.2. When placing an Order the Customer is responsible for accurately identifying the Goods and quantity required and to ensure that the terms of its Order and any applicable specification are complete and accurate.
- 2.3. Each Order for individual Goods shall constitute a separate contract.
- 2.4. The Customer can only cancel an Order (or any part of an Order) which the Company has already accepted, with the Company's prior agreement in writing. The Company is not bound to agree to any such cancellation and may complete such Order, even if the Customer purports to cancel it.
- 2.5. The description of the Goods shall be set out in the Company's acknowledgement of the Order. No statement, description, information, warranty, condition or recommendation shall be construed to vary in any way any of these Conditions or the Contract.

## 3. Delivery

- 3.1. The Company shall deliver the Goods to an agreed address set out in the Order. Times and dates specified for delivery are intended to be an estimate only and time of delivery is not of the essence.
- 3.2. Where the Company is unable to deliver an order in full it will (for hospital Customers who have signed up to back orders only) deliver any balance at a later date. For all other orders, the unfulfilled portion of the order will be cancelled. The Company shall be entitled to invoice the Customer for each instalment individually and each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 3.3. Delivery of the Goods shall be completed on the Goods' arrival at the delivery location and the signature of the delivery note or electronic device by any person employed at the delivery address shall be conclusive proof of the delivery of the Goods.
- 3.4. The Company may at any time cease deliveries and demand payment for any Goods already supplied, regardless of any previous agreement or arrangement to the contrary.
- 3.5. The Customer shall ensure that the delivery location complies with all regulatory requirements relating to the delivery, acceptance and storage of the Goods (unless the delivery location is Alloga UK's premises).

## 4. Risk

- 4.1. The Goods shall be at the Customer's risk from the time of delivery.

## 5. Price

- 5.1. The price payable by the Customer for the Goods delivered shall be that agreed between the Company and the Customer, as applicable at the date of order.
- 5.2. The Customer is additionally liable for any government tax or duty, and the price for the Goods shall be exclusive of any value added tax or other similar taxes or levies which the Customer will pay, in addition when it is due to pay for the Goods.
- 5.3. The price list is subject to revision at any time without prior notice.

## 6. Payment

- 6.1. the Company shall provide an invoice in respect of the Goods delivered at the time of delivery. Any queries must be raised with the Customer Care Department of ALLOGA UK within 3 Business Days of the invoice date.
- 6.2. At the beginning of each month the Company will issue a statement to the Customer detailing all invoices issued during the preceding month and all outstanding sums due. Any queries must be raised in writing on or before the 15th of the month with the ALLOGA UK Customer Services Department. Payment shall be in full, without any deduction, set-off or counterclaim, and time of payment shall be of the essence of this agreement.
- 6.3. Payment for invoices must be received by the Credit Control Department at ALLOGA UK no later than 2.30 pm on the last Business Day of the month following the date of the invoice. All payments shall be in the currency stated in the invoice by electronic transfer to Alloga UK's bank account as notified to the Customer from time to time, which any applicable charges on such payments being at Customer's expense. No payment shall be deemed to have been received until Alloga UK has received cleared funds. Payment must not be given to any ALLOGA UK employee.
- 6.4. the Company reserves the right to require full or partial payment or the provision of acceptable security from the Customer prior to delivery.
- 6.5. If any sum due from the Customer to the Company under the Conditions of Sale is not paid on or before the due date for payment then all sums then owing by the Customer to the Company shall become due and payable immediately and, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel or suspend its performance of any Order including suspending deliveries of the Goods to

the Customer until arrangements as to payment or credit have been established which are satisfactory to the Company.

- 6.6. If payment is not made to ALLOGA UK in accordance with 6.3, the Company reserves the right to charge interest on the amount unpaid at the rate of 5% p.a. above the Base Rate of the Bank of England for each day that payment remains outstanding, whether before or after judgement and the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure.

## 7. Transfer of Property and Title

- 7.1. ALLOGA UK is acting as the agent of the Company (its principal) in the supply of the Goods to the Customer. References in these conditions to ALLOGA UK shall be read in this context save where Alloga UK is named as the seller in the Contract in which case Alloga UK is the principal.
- 7.2. Property in and title to Goods shall not pass from the Company to the Customer until ALLOGA UK has received payment of all sums due in respect of those Goods under these conditions.
- 7.3. Until title passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and keep them properly stored, protected, insured and readily identifiable as the property of the Company.
- 7.4. The Customer may in the ordinary course of business resell the Goods on normal trade terms, notwithstanding that at the time of such resale the Goods remain the property of the Company, unless an event set out in Condition 10 occurs or the Company terminates the Contract, provided that the Customer shall:
  - a. account to ALLOGA UK as bailee for the sale proceeds to the limit of the total owed to the Company; and
  - b. hold the sale proceeds in a separate account as trustee for the Company until all sums due are paid.
- 7.5. Until title passes to the Customer, and provided the Goods have not been resold, the Company may require their return. If the Customer fails to do so forthwith, ALLOGA UK may enter the premises where the Goods are stored and repossess them and the Customer shall indemnify and hold harmless ALLOGA UK against any liability, costs, demands and expenses of or incurred by the Company and/or ALLOGA UK as a result.
- 7.6. For the purposes of this condition 7, the Customer shall ensure that Alloga UK, its employees, agents and subcontractors shall be entitled to free and unrestricted access to any premises owned, occupied or controlled by the Customer and /or any other location where any of the Goods are situated at any time without prior notice.
- 7.7. The Customer shall not pledge or charge the Goods by way of security whilst they remain the property of the Company and if the Customer does so without written permission from the Company or ALLOGA UK, then all sums due will become payable immediately.

## 8. Force Majeure

- 8.1. The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.

## 9. Liability

- 9.1. ALLOGA UK shall not be liable to the Customer for any shortages in quantity delivered, damage or loss, short dated deliveries, or any defects in the Goods, unless the Customer notifies ALLOGA UK in accordance with 9.4. the Company shall not be liable for any defects in the Goods caused by abnormal conditions of storage, wilful damage, negligence, failure to follow the Company's or ALLOGA UK's instructions or misuse of the Goods.
- 9.2. Where liability is accepted by the Company under clause 9.1, the Company's only obligation shall be at its option to make good any shortage or non delivery and/or replace any Goods found to be damaged or defective and/or refund the cost of any such Goods to the Customer by a credit note.
- 9.3. Without prejudice to 9.9, the Company's maximum liability arising under or in connection with an order for the Goods, whether arising in contract, tort (including negligence), restitution, breach of statutory duty or misrepresentation or otherwise is limited to the net price of the Goods invoiced.
- 9.4. The Customer must notify ALLOGA UK of any potential claim in writing within 3 Business Days of delivery. Each notification must show the reason for claim and
  - a. the name and address of the Customer
  - b. the quantity, description, strength and pack size for which a claim is being made.
  - c. the invoice number and date of the relevant invoice.
- 9.5. Any returned Goods to which the Misuse of Drugs Act 1971 (as amended) is applicable, must be packaged separately and entered onto a separate document from any other return. ALLOGA UK's Customer Services department must be pre-advised by telephone or in writing of any such returns.
- 9.6. Any returned Goods of a hazardous nature must be packaged separately in accordance with the prevailing statutory safeguards relating to the handling of the hazardous chemicals.

- 9.7. Any medicinal Goods subject to a manufacturers or product licence holders recall, will only be accepted in accordance with the specific instructions given at the time of such recall. All such Goods must be packaged separately and identified as relating to the Good of batch recall and accompanied by specific paperwork.
- 9.8. A copy of the document supporting any returned goods must be retained by the Customer and must be signed by the driver as acknowledgement of receipt. Any subsequent claim for credit may be refused unless such proof of collection can be provided on request.
- 9.9. Nothing in these conditions shall limit or exclude the liability of either party for (a) death or personal injury caused by negligence (b) fraud or fraudulent misrepresentation (c) breach of the terms implied by s12 of the Sale of Goods Act 1979 or s2 of the Supply of Goods and Services Act 1982 or (d) defective products under the Consumer Protection Act 1987.
- 9.10. Save as expressly provided in these conditions, all conditions, warranties, representations and other terms expressed or implied by statute, common law or otherwise in relation to the Goods are hereby excluded to the fullest extent permitted by law.
- 9.11. Subject to 9.9, the Company will not be liable to the Customer for any reason whatever (whether in contract, tort – including negligence, restitution, breach of statutory duty or misrepresentation or otherwise) for any (a) consequential loss (b) loss of profit (c) loss of goodwill (d) loss of business or opportunity (e) interest cost (f) special damage or (g) indirect damage suffered that arises under or in connection with an Order for Goods in each case whether direct or indirect.
- 9.12. Employees or agents of the Company or ALLOGA UK are not authorised to make any representations concerning the Goods unless confirmed by the Company or ALLOGA UK in writing.
- 9.13. All descriptions and specifications are for identification only and do not form part of these conditions or give rise to any liability on the part of the Company.
- 10. Termination**
- 10.1. The Company may immediately terminate the sale of the Goods under these Conditions by giving notice in writing to the Customer if:
- the Customer fails to pay any sum payable under the Contract within seven days of its due date;
  - the Customer commits a material breach of any of its obligations under the Contract which is incapable of remedy;
  - the Customer commits a material breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist;
  - the Customer suffers an Insolvency Event; or
  - the Customer ceases, or appears in the reasonable opinion of the Company likely or is threatening to cease, to carry on all or a substantial part of its business.
- 10.2. The termination of the Contract will be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.
- 10.3. On termination of the Order for any reason whatsoever:
- the Customer shall immediately pay to Alloga UK all outstanding unpaid invoices and interest; and
  - any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect.
- 11. General**
- 11.1. Any notice given under these conditions shall be in writing and addressed to:
- the Customer at the agreed delivery address or such other address as may have been notified to ALLOGA UK;
  - the Company at the Company's registered address, for the attention of the Company Secretary (or, if the Company has no company secretary, a director or other duly authorised officer), with a copy to ALLOGA UK Amber Park, Berristow Lane, South Normanton, Derbyshire, DE55 2FH for the attention of the Managing Director.
- 11.2. Notice may be served as follows:
- Personal delivery – deemed delivered on delivery provided delivery is between 9:00 and 17:00 on a Business Day;
  - Pre-paid first class domestic postal service – deemed delivered on the second Business Day after posting.
- 11.3. Each party agrees that the only rights and remedies available to it arising out of or in connection with any warranties, statements, promises or representations will be for breach of contract and irrevocably and unconditionally waives any right it may have to any claim, rights or remedies including any right to rescind the Contract which it might otherwise have had in relation to them.
- 11.4. The rights and remedies of either party in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time granted by that party to the other nor by any failure of, or delay in ascertaining or exercising any such rights or remedies. No waiver by the Company or ALLOGA UK of any breach of these conditions by the Customer shall be considered as a waiver of any subsequent breach.
- 11.5. These conditions and any dispute or claim arising in relation to the conditions (whether contractual or non-contractual) shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.
- 11.6. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the same shall be deemed omitted from the Contract and the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 11.7. No term of these conditions shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to the Contract.
- 12. Alloga UK Title Sale Conditions**
- Where the Company is Alloga UK, the following provisions shall also apply:
- 12.1. If for any reason the Customer does not accept delivery of any of the Goods when they are ready for delivery, or Alloga UK is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations then:
- the Goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damaged caused by Alloga UK's negligence); and
  - Alloga UK may store the Goods until actual delivery whereupon the Customer shall be liable for all related costs and expenses (including without limitation storage and insurance).
- 12.2. Goods, once delivered, may not be returned unless their return is agreed in advance in writing by Alloga UK (in which case the Customer must ensure that the Goods are packaged and returned strictly in accordance with Alloga UK's instructions).
- 12.3. All pallets and returnable containers (such as multi use validated packaging) must be returned to Alloga UK undamaged and within 10 Business Days of their provision to the Customer. Alloga UK is entitled to charge for the Customer for any damage or loss.
- 12.4. If the Force Majeure event prevents Alloga UK from providing the Goods for more than three months, Alloga UK shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer.
- 12.5. If Alloga UK fails to deliver the Goods, Alloga UK's liability shall be subject to Condition 9 and be limited to an amount equal the price of the undelivered Goods. Alloga UK shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide Alloga UK with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods or the Customer's breach of the Contract.
- 12.6. Alloga UK warrants that on delivery the Goods shall comply with their Specification.
- 12.7. The Customer will be deemed to have accepted the Goods as being in accordance with the Contract unless:
- within three Business Days of the date of delivery of the Goods, the Customer notifies Alloga UK in writing of any defect or other failure of the Goods to conform with the Contract (which would be apparent upon reasonable inspection and testing of the Goods within three Business Days); or
  - the Customer notifies Alloga UK in writing of any defect or other failure of the Goods to conform with the Contract within a reasonable time (but no later than 4 weeks after delivery) where the defect or failure would not be so apparent within three Business Days of the date of delivery, failing which the Customer shall not be entitled to reject the Goods and Alloga UK shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 12.8. If the Customer establishes to Alloga UK's reasonable satisfaction that there is a failure by Alloga UK in relation to the conformity of the Goods with warranty set out on Condition 12.6 then Alloga UK shall at its option, at its sole discretion and within a reasonable time:
- issue a credit note to the Customer in respect of the whole or part of the Contract price of such Goods as appropriate having taken back such Goods, subject, in every case, to the remaining provisions of this Condition 12 provided that the liability of Alloga UK under this Condition 12 shall in no event exceed the purchase price of such Goods and performance of any one of the above options shall constitute an entire discharge of Alloga UK's liability under this warranty; or

- b) make good such defect or failure in such Goods free of charge to the Customer (including all costs of transportation of any Goods to and from the Customer for that purpose).
- 12.9. Condition 12.8 shall not apply unless the Customer:
- notifies Alloga UK in writing of the alleged defect within the time scales stated in Condition 12.7 and in any event within [4] weeks of the delivery of the Goods; and
  - affords Alloga UK a reasonable opportunity to inspect the relevant Goods and, if so requested by Alloga UK and where it is reasonable to do so, promptly returns to Alloga UK or such other person nominated by Alloga UK a sample of the Goods within 14 days, carriage paid by the Customer, for inspection, examination, and/or otherwise permit Alloga UK to have access to the Goods at the Customer's premises or other location where they may be.
- 12.10. If Alloga UK elects to replace the Goods pursuant to Condition 12.8, Alloga UK shall deliver the replacement Goods to the Customer at the address to which the defective Goods were delivered (strictly complying with Alloga UK's requirements for returns) and the legal, equitable and beneficial title to the defective Goods which are being replaced shall (if it has vested in the Customer) re-vest in Alloga UK and the Customer shall make any arrangements as may be necessary to deliver up to Alloga UK the defective Goods which are being replaced.
- 12.11. Alloga UK shall be under no liability under the warranty at Condition 12.6;
- in respect of any defect arising from wilful damage, failure to follow Alloga UK's (or the manufacturer's) instructions (whether oral or in writing), misuse or alteration or relabelling of the Goods without Alloga UK's approval;
  - if the total price for the Goods has not been paid by the due date for payment;
  - if the Customer makes any further use of the Goods after giving notice in accordance with Condition 12.7.
- 12.12. The Contract is personal to the Customer. The Customer may not assign, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract without the prior written consent of Alloga UK.
- 12.13. Alloga UK may assign, delegate, sub-contract, transfer, charge or otherwise dispose of all or any of its rights and responsibilities under the Contract at any time without the prior written consent of the Customer.
- 12.14. The Contract shall be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document whatsoever and whenever) unless agreed in writing between Alloga UK and the Customer.

### 13. Definitions

13.1 In these Conditions the following words and expressions have the following meanings:

**Business Day** means any day which is not a Saturday, a Sunday or a bank or public holiday in any part of the United Kingdom;

**Company** means the entity that sells Goods to the Customer as listed on the applicable invoice, which may be Alloga UK Limited ("Alloga UK") or another entity where Alloga acts as that entity's agent.

**Conditions** means these terms and conditions and any special terms and conditions agreed in writing between the Customer and Alloga UK;

**Contract** means any contract between the Company and the Customer for the sale of Goods incorporating these Conditions;

**Customer** means the person(s), firm or company who purchases the Goods from the Company;

**Force Majeure Event** means any event outside the reasonable control of the relevant party affecting its ability to perform any of its obligations (other than payment) under these Conditions including act of God, fire, flood, lightning, war, revolution, act of terrorism, riot or civil commotion, epidemic, strikes, lock outs and industrial action;

**Goods** means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);

**Insolvency Event** means the entity:

- suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;
- calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up or dissolution of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);
- has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;
- has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;

- calls a meeting, gives a notice, passes a resolution, makes an application or files documents, or an order is made, or any other steps are taken in respect of obtaining a moratorium or a moratorium is obtained for that party;
- takes any steps in connection with proposing a reorganisation of the party (whether by way of voluntary arrangement, company voluntary arrangement, scheme of arrangement, compromise or arrangement or otherwise) or any such reorganisation is effected in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;
- has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;
- has any distress, execution or sequestration or other such process levied or enforced on any of its assets; or
- has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in paragraphs a. to h. above.

**Order** means any order from the Customer to Alloga UK for the supply of Goods;

**Specification** means the Company's specification for the Goods expressly referred to in the Contract;

### Drafting Conventions

- The headings to Conditions are inserted for convenience only and shall not affect the interpretation or construction of these Conditions.
- Words expressed in the singular shall include the plural and vice versa. Words referring to a particular gender include every gender. References to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity.
- The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- References to any legislation or legislative provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the date of the Contract.