

CONDITIONS OF SALE

1. General

Notwithstanding any terms contained in the Buyers Purchase Order, Arena Pharmaceuticals Ltd ("the Seller") accepts the Buyer's order on the express condition that the Buyer agrees to the terms and conditions set forth herein and all qualifications thereof by the Buyer in any form whatsoever shall not form part of the Contract resulting from acceptance of the Buyer's order unless expressly agreed in writing by the Seller.

2. Limitation of Liability

The Seller's liability for any and all direct loss or damage resulting to the Buyer from the defective goods or from any other cause shall be limited to the purchase price of quantity of the goods in respect of or in relation to which such loss or damage is claimed. Subject as aforesaid the Seller shall be under no liability in contract or in tort for any loss or damage or personal injury arising directly or indirectly out of the supply or use of the goods or containers.

3. Notification of Claims

Claims on account of damage to, or partial loss of goods in transit must be made to the Seller and notified to the Carrier in writing within seven (7) days after delivery. Claims for non-delivery must be submitted in writing to the Seller within seven (7) days after invoice date. It is the Buyer's responsibility to inspect the quality of the goods on delivery. Quality claims must be submitted in writing to the Seller within seven (7) days after the Buyer learns of the alleged defect. All claims not made in writing and received by the Seller within the time period specified above shall be deemed waived.

4. Price Variation

The Seller may at any time before delivery increase the price of the goods by notice to the Buyer, forthwith on receipt of which the Buyer may cancel the undelivered balance.

5. Containers

Containers will not be returned unless stated as returnable in the Seller's quotation or current price list. Returnable containers will be returned to Seller's works in good condition carriage forward within three month of delivery; otherwise containers loaned free will be charged at replacement value, and no credit will be due on charged containers

6. Delivery Title and Risk

1. Upon delivery it is the buyer's responsibility to check that goods are delivered as ordered – including, but not limited to, specification, packing and quantity - and any discrepancies notified to Arena prior to opening the pack or drums. Once outer packing has been opened, the buyer will be deemed to have accepted the goods by conduct as per the Sale of Goods Act 1979
2. Any stated delivery date, period or rate is given as a guide only and the Seller accepts no responsibility for loss or damage resulting from delay, howsoever arising.
3. The risk in the goods shall pass to the buyer at the point of delivery.
4. So as to secure payment in the event that the Buyer shall enter into liquidation, have a Receiver appointed, have a Winding up Order made against it, or enter into any composition with its creditors, for no other purpose and notwithstanding delivery and the passing of risk:
 - (a) the property in the goods shall remain in the Seller until the Buyer has paid all monies owed by it to the Seller under this or any other contract for similar goods. If any such goods are processed into, incorporated in, used as materials for, or mixed with other goods or materials prior to such payment, the property (but not the risk) in the whole of such other goods or materials shall, so long as such goods remain unsold, pass to the Seller and shall remain with the Seller until payment of all such monies as are specified above. Until such payment is made, the Buyer shall possess all goods and materials the property in which is vested in the Seller on a fiduciary basis only and in any of the events specified above the Buyer shall store such goods and materials at no cost to the Seller so that they are clearly identified as belonging to the Seller.
 - (b) all debts outstanding but not then due shall immediately become due and in such case the Seller may (without prejudice to it or any of its other rights and remedies) recover and resell any or all of such goods or materials and may enter upon the Buyer's premises for that purpose. Nothing herein shall give the Buyer the right to return goods to the Seller.

7. Payment

Payment is due by 30 days from invoice date unless expressly stated otherwise by the Seller on the order acknowledgement.

8. Default in Payment

Time of payment shall be of the essence and if payment is not made on the due date, interest may be charged from that date on monies then outstanding on a per diem basis at the rate of 5% over the base lending rate of Lloyds Bank PLC provided that no time or indulgence allowed by Seller shall prejudice any contractual right or remedy of Seller.

9. Instalments

If the Seller fails to make delivery, or makes defective delivery of any one instalment, such failure or defective delivery shall not vitiate the Contract as to the other instalments.

10. Buyer's Credit

The Seller reserves the right without prejudice to its other rights and remedies either to terminate this Contract or to suspend further deliveries under it, or require payment in advance in the event that the Buyer fails to pay for one delivery when same becomes due, or the Buyer's financial responsibility becomes unsatisfactory to the Seller, or if the Buyer, being a company, goes into liquidation or has a receiver appointed or, not being a company, has a receiving order made against him or enters into any arrangements or composition with creditors.

11. Compliance with Instructions

The Buyer shall undertake to draw the attention of all persons whatsoever having access to, using or handling the goods to any information or warnings concerning methods by, or conditions under, which the goods should be used or handled or stored referred to in the Seller's literature relating to the goods or upon any label attached to the goods or to the packaging thereof and to ensure compliance as far as possible by such persons. The Buyer shall indemnify the Seller against any loss or liability incurred by the Seller arising from any breach by the Buyer of the foregoing.

12. Force Majeure

Deliveries may be partially or totally suspended by either party during any period in which it is prevented from manufacturing, delivering or taking delivery of the goods through any circumstances outside its control. If, because of such circumstance, the Seller is unable to supply the total demand for the goods, the Seller may allocate its available supply among all of its customers, including those not under contract, in an equitable manner. Deliveries so suspended shall be cancelled without liability, but the Contract shall otherwise remain unaffected.

13. Limitation on Resale and Assignment

Unless otherwise agreed in writing the Buyer shall use the goods only in or for its own operation and shall not resell the goods to any third person. The Contract is personal to the Buyer who may not assign it without the Seller's written consent.

14. Proper Law and Arbitration

The Contract resulting from the Seller's acceptance of the Buyer's order shall be governed by and construed according to the laws of England. Any disputes arising out of the Contracts shall be referred to arbitration in England in accordance with the provisions of the Arbitration Act 1950 or any statutory modification thereof for the time being in force.