

TERMS AND CONDITIONS OF SALE OF PROVIMI LIMITED

1. General

- 1.1 These Conditions constitute the only conditions on which Provimi Limited (company number 01262691) (hereafter the "Company") is willing to supply goods (hereafter "Goods") or provide services (hereafter "Services") to any person who purchases Goods or Services from the Company (hereafter a "Customer"). Any variations to or waiver of these Conditions or any additional representation or warranty given in relation to the Goods shall have no effect unless expressly agreed in writing and signed by the Company. The Conditions shall prevail over any terms and conditions that the Customer purports to apply under any document issued by the Customer or which are implied by trade, custom, practice or course of dealing.
- 1.2 For the purposes of these Conditions (i) a "Contract" shall mean any agreement between the Company and the Customer for the sale of Goods or Services; and (ii) "Brexit" shall mean the UK ceasing to be a member state of the European Union and ceasing to be subject to the transition or implementation arrangements provided for by Part 4 of the withdrawal agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time).
- 1.3 The Customer agrees that the Company may, at its sole discretion, subcontract the manufacture, supply and/or delivery of the Goods or Services to any affiliated company of the Company or other third party.
- 1.4 If any provision of these Conditions is found to be wholly or partly illegal, void or unenforceable it shall, to the extent necessary, be deemed to be severed and the remaining provisions shall continue in full force and effect.
- 1.5 The parties to any Contract do not intend that any term of the Contract will be enforceable by any person that is not a party to it whether by virtue of the Contracts (Rights of Third Parties Act 1999) or any equivalent status in any other relevant jurisdiction.

2. Conditionality

- 2.1 All Contracts are conditional upon satisfactory results of credit checks on the Customer. In addition, each delivery of Goods and Services is conditional on the creditworthiness of the Customer remaining satisfactory. The Company may amend the payment terms applicable to the Customer or suspend or terminate the Contract without liability in the event that, in its reasonable opinion, the Customer's creditworthiness is adversely affected or the Customer ceases to trade, fails to make any payment when due or any procedure or step is taken in relation to, or with a view to, the Customer entering into insolvency proceedings, administration or liquidation, or the appointment of a receiver or administrative receiver over any of its assets, or any composition with its creditors.
- 2.2 The Company reserves the right, without liability to the Customer, to cancel the Contract in the event the Company is unable to supply the Goods due to reductions in availability of raw materials, energy, services or other supplies required by the Company or capacity issues at its manufacturing facility.

3. Orders and Volumes

- 3.1 Where a Customer has entered into a sales Contract with the Company for the purchase by the Customer of a specified volume of Goods over a set period, the Customer shall be obliged to purchase such volume of Goods within that period and shall be liable to the Company for any failure to do so. The Customer acknowledges that there is a minimum lead time of 5 working days between the date of any order and the requested delivery date.
- 3.2 Where there is no long term Contract in place as referred to in Condition 3.1, any order placed by a Customer for the supply of Goods or Services shall be deemed to be an offer by the Customer to purchase Goods subject to these Conditions, which is subject to acceptance by the Company by means of the issue of an order confirmation. Following such acceptance, no such Contract may be cancelled without the consent of the Company to be given in its absolute discretion and subject to conditions as it thinks fit.

4. Prices and Payment

- 4.1 Prices quoted by the Company (whether verbally or in writing) shall not be deemed to be offers capable of acceptance and may be withdrawn by the Company at any time prior to a Contract being entered into. The price payable for the Goods or Services shall be as agreed between the Customer and the Company in the Contract and, unless otherwise agreed or reflected by any Incoterm on the basis of which the Goods are sold, is exclusive of VAT, costs of carriage, customs and other duties.
- 4.2 Payment is due in cleared funds within 30 days of the date of the Company's invoice save where alternative payment terms have previously been agreed in writing between the parties. Payment will be made in full without delay and without any deduction by way of any set-off or counterclaim. Time for payment shall be of the essence.
- 4.3 The Company reserves the right to increase the prices of the Goods or Services or reduce its supply commitments in terms of quantities agreed between the Customer and the Company, whether in relation to a single Contract or a number of Contracts, as necessary to take account of any increase in cost to the Company due to (i) any imposition of, or a change in any jurisdiction to, any applicable law, regulation, tax, duty, levy or other payment imposed upon, or which has an impact on the cost of manufacture of, the Goods or Services or the import and export from or into the UK of the Goods or any raw materials used to manufacture the Goods; or (ii) circumstances of hardship/force majeure or significant increases in prices, or reductions in availability of, raw materials, labour, energy, services or other supplies required by the Company. This shall

include, without limitation, any such increases in cost arising as a result of Brexit and the price will be adjusted to reflect such increases.

5. Delivery

- 5.1 Unless otherwise agreed, delivery of Goods or Services shall take place at the Customer's place of business or its nominated third party store. Delivery of Goods shall occur upon completion of unloading of the Goods at the Customer's premises. The Customer shall advise both the Company and its haulier in writing of any bio-security requirements which need to be complied with at the Customer's premises. The Customer shall supervise the haulier's compliance with any such bio security procedures and the unloading process and shall provide adequate staff, equipment, instructions and assistance to enable the Goods to be offloaded at the Customer's premises.
- 5.2 If it is agreed that delivery shall take place at the Company's place of business or its nominated third party store, delivery shall occur upon completion of loading of the Goods onto the vehicle of the Customer or its agents. The Customer shall ensure that the delivery vehicle is clean, sound and fit for purpose.
- 5.3 The Company and the Customer may agree, or the Customer may request, a date or time or period for delivery of the Goods or Services but any such dates/times are intended to be estimates and time shall not be the essence of the Contract or made so by notice. The Company shall use its reasonable endeavours to comply with any date or time agreed for delivery but, subject to the other provisions of these Conditions, the Company will not be liable for any loss, damages, charges or expenses caused by any delay in the delivery of the Goods or Services, nor will any delay entitle the Buyer to terminate or rescind the Contract, unless such delay exceeds 30 days. The Company's liability for any failure or delay in delivery shall be limited to the excess (if any) over the price of the Goods or Services of the price of replacement goods to the Customer, in the cheapest available market. Under no circumstances will the Company be liable for any failure or delay in delivery of the Goods arising as a result of Brexit including, without limitation, issues caused by failures or delays in importing raw material necessary to manufacture the Goods.
- 5.4 The Customer undertakes to collect or take delivery of the Goods or Services at the agreed time/date or evenly during the agreed period and agrees to indemnify the Company against any costs or losses incurred by the Company as a result of any failure to do so (including, without limitation, additional delivery costs and demurrage and storage costs), other than where such failure arises as a result of the default of the Company. In such circumstances the Company may sell the Goods and charge the Customer for any shortfall below the Contract price and shall thereafter have no further liability under the Contract.
- 5.5 In the event that Goods are specified to be sold on the basis of a trade term defined in Incoterms 2010 (as amended from time to time) such trade term shall prevail and, to the extent these Conditions are inconsistent with the relevant Incoterm in the context of delivery, risk or payment of duties, the Incoterm shall prevail.

6. Risk and Title

- 6.1 The Goods are at the risk of the Customer from the time of delivery or, if the Customer fails to take delivery pursuant to Condition 5.4, at the originally agreed delivery time.
- 6.2 The Company shall remain the sole and absolute owner of the Goods until such time as the price of the Goods and all other monies which are or which become due to the Company from the Customer have been paid to the Company by the Customer in cash or cleared funds. Until such time, the Goods shall be property and separately stored and insured by the Customer with any insurance proceeds to be held on trust for the Company and not mixed with any other monies. The Company shall have the right to enter the Customer's premises to enforce its retention of title at any time and remove the Goods.
- 6.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Customer does so, all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) immediately become due and payable.
- 6.4 The Company may sue for the price of the Goods notwithstanding that property in the Goods has not passed to the Customer.

7. Inspection

- 7.1 The Customer must carefully examine all Goods upon arrival of the Goods at the Customer's premises for defects in packaging or defects in the Goods detectable by visual examination. Any defects discovered as a result of such inspection must be marked on the delivery note relating to the Goods, or if no delivery note is signed, notified to the Company within 3 working days of delivery. In the event a defect in Goods is discovered the Customer shall not use or mix the Goods following such discovery. The Customer's sole remedy shall be limited, as the Company may elect, to the replacement of the defective Goods or Services or a refund of the price of the Goods or Services.

8. Quality and Quantity

- 8.1 The Company warrants that (subject to the other provisions of these Conditions), upon delivery the Goods will comply with the specification for the Goods agreed in writing and signed by the Company and the Customer or, in the absence of an agreed specification, the specification for the Goods provided to the Customer by the Company (which may be in the form of a Product Data Sheet), subject to tolerances set out in the such specification or any tolerances provided by law.
- 8.2 The Company warrants that the Services will be performed with reasonable care and skill.

- 8.3 All other warranties, terms and conditions, express or implied by statute or otherwise are hereby excluded to the fullest extent permissible by law.
- 8.4 In the event that the Goods or Services do not comply with the express terms of the Contract or there is a breach of these warranties then the Company shall, at its option, either replace the defective Goods or Services free of charge to the Customer or refund up to the maximum of the total payments made by the Customer to the Company under the Contract in respect of the defective Goods or Services.
- 8.5 Company upon dispatch shall be decisive. Delivery of a shortage or surplus not exceeding 5% of the quantity of the Goods ordered shall, at the Company's option, be considered to be due execution of the Contract and the Customer shall not be entitled to object to or reject the Goods by reason of such surplus or shortfall and shall pay for such Goods at the pro rata Contract rate.
- 9. Limitation of Liability**
- 9.1 The Company shall not be liable for a breach of these Conditions or any defects in the Goods or Services unless (i) the Customer gives written notice of a defect to the Company within 3 working days of the time when the Customer discovers or, if earlier, ought to have discovered the defect; (ii) the Company has been given a reasonable opportunity after receiving the notice of examining such Goods or Services; and (iii) the Customer notifies the Company in writing of a claim within 6 weeks of delivery of the Goods or Services.
- 9.2 The Customer acknowledges and agrees that any recommendations or advice provided by the Company in relation to the Goods to be used and particular specifications or quantities of the Goods which may be appropriate for the Customer's use is provided free of charge and based entirely on such information as is provided to the Company by the Customer at its discretion. The Customer shall rely on such advice at its own risk and the Company shall have no liability to the Customer whether pursuant to the Contract, these Conditions, in tort (including negligence, misrepresentation and breach of statutory duty) or otherwise in relation to any such advice given.
- 9.3 The Company shall have no liability for any loss or damage arising as a result of the Customer's breach of its obligations in these Conditions or the Contract. The Customer shall be deemed to have full knowledge of the nature of the Goods or Services. The Company shall not be liable for a breach of these Conditions, in tort or otherwise if any defect arises from any specification for the Goods provided by the Customer, any failure to follow the instructions for use furnished to it by the Company, or good industry practice in relation to, without limitation, storage, handling, dosage, mixing and use of the Goods or Services or wilful damage, negligence or abnormal working conditions.
- 9.4 In the event that any additives are added to the Goods at the request of the Customer (including pharmaceutical products) this is done at the Customer's risk and the Company shall not be liable for the quality, effectiveness or impact of such additives. The Customer shall indemnify the Company against all loss, damages, costs or expense arising from the Company's use of such additives in the Goods.
- 9.5 The Company's aggregate liability for breach of these Conditions or the Contract or in relation to the supply of the Goods or Services, in tort (including negligence, misrepresentation and breach of statutory duty) or otherwise shall be limited to three times the value of the particular Goods forming part of the relevant delivery to which the liability relates.
- 9.6 The Company shall have no liability whether in contract, tort or otherwise for any (i) loss of profit, loss of goodwill, loss of brand or reputation or loss of sales; or (ii) claims for consequential or indirect loss to a Customer or any other person in connection with the Goods or Services.
- 9.7 The Company shall have no liability for failure to perform or delay in performing its obligations under a Contract occasioned by any act beyond the reasonable control of the Company including, without limitation, act of God, act of terrorism, war, adverse weather, pandemic or epidemic, action by government or other authority strike, accident or breakdown of plant or machinery, power failure, crop failure or fire.
- 9.8 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation or for any other liability that cannot be excluded by law.
- 10. Intellectual Property and Confidentiality**
- 10.1 The Customer acknowledges and agrees that all intellectual property rights in the Goods and their specifications are the Company's property.
- 10.2 The Customer shall not at any time disclose to any person any confidential information concerning the business affairs or products of the Company including, without limitation, the specifications or the pricing of the Goods, other than to its employees as necessary to exercise its rights under the Contract or as required by law.
- 11. Termination**
- 11.1 The Company may terminate any and all Contracts or suspend any future deliveries immediately upon notice to the Customer without liability to the Customer in the event that the Customer (i) fails to pay any amount due in relation to the provision of Goods and Services; (ii) fails to comply with any of its other obligations pursuant to any Contract or these Conditions; or (iii) enters into any insolvency or bankruptcy procedures in any jurisdiction. Upon such termination, all amounts due from the Customer to the Company in relation to the supply of Goods or Services shall become immediately due and payable.
- 12. No Assignment**
- 12.1 The Customer may not assign, transfer, mortgage or charge or deal in any other manner with its rights under these Conditions or the Contract without the prior written consent of the Supplier.
- 13. Governing Law**
- 13.1 These Conditions and any Contracts shall be governed by the laws of England and disputes arising out of or in connection with these Conditions or any Contract shall in such case be subject to the exclusive jurisdiction of the English courts.