

THE TARGET HEALTHCARE GROUP

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS

1. Definitions

The following definitions apply:

Conditions – the terms and conditions set out in this document as amended from time to time in accordance with clause 11.8;

Contract – the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

Customer – the person or organisation who purchases the Goods from the Supplier;

Goods – the goods (or any part of them) set out in the Order;

Licensed Customer – a Customer which holds a Wholesale Dealers Authorisation (WDA(H));

Order – means an order for Goods placed with the Supplier or its authorised representatives;

Price – the amount payable by the Customer to the Supplier in respect of an Order;

Sanctions Laws – any law, regulation or wider measure applicable to either the Customer or the Supplier relating to the adoption, implementation and enforcement of economic sanctions, export controls and trade embargos;

Sanctioned Person – any individual, entity or body (i) specifically designated under Sanctions Laws, or (ii) owned or controlled by any individual, entity or body specifically designated or listed under Sanctions Laws, or (iii) acting for or on behalf of any individual, entity or body specifically designated or listed under Sanctions Laws;

Supplier – the relevant member company of the Target Healthcare Group with which the Customer places its Order being one of: (i) Target Healthcare Limited, registered in Scotland (with company number SC431859) and having its registered office at 8 Redwood Crescent, East Kilbride, Scotland G74 5PA; (ii) Target Healthcare (Wholesale) Limited, registered in Scotland (with company number SC725145) and having its registered office at 8 Redwood Crescent, East Kilbride, Scotland G74 5PA; (iii) Target Healthcare International Limited, registered in Scotland (with company number SC728731) and having its registered office at 8 Redwood Crescent, East Kilbride, Scotland G74 5PA; (iv) Target Healthcare (NI) Limited registered in Northern Ireland (with company number NI688104) and having its registered office at Unit 5 Central Park Mallusk, Newtownabbey, Northern Ireland, BT36 4FR; and (v) Fern Consumer Products Limited registered in England and Wales (with company number 06120064) and having its registered office at Quantum House, Hobson Industrial Estate, Burnopfield, County Durham, NE 16 6EA

The Target Healthcare Group – the group of companies of which the parent company is Target Healthcare Group Limited (registered in Scotland with company number SC723531) and having its registered office at 8 Redwood Crescent, East Kilbride, Scotland G74 5PA.

Unlicensed Customer – a Customer which is not a Licensed Customer (for example a pharmacy).

2. Basis of Contract

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

2.2 The Contract shall apply to all Orders and an Order shall only be deemed to be accepted when the Supplier issues a written or oral acceptance of the Order and for the avoidance of doubt, the Supplier reserves the right to reject Orders, at its discretion, prior to this point.

3. Delivery

3.1 The Supplier shall use reasonable endeavours to procure that:

3.1.1 each delivery of Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods, any special storage instructions and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

3.1.2 the Supplier shall deliver the Goods to the location set out in the Order (**Delivery Location**). Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

3.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

3.3 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by:

3.3.1 a Force Majeure Event (as defined in clause 9 below); or

3.3.2 the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply or delivery of the Goods by the Supplier.

3.4 If the Customer fails to take delivery of the Goods within three business days of the Supplier notifying the Customer that the Goods are ready then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

3.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third business day after the day on which the Supplier notified the Customer that the Goods were ready; and

3.4.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including storage and insurance costs).

3.5 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3.6 Subject to clause 3.3 above, if at any time the Supplier is unable to fulfil an Order submitted by the Customer, either party may cancel such Order with immediate effect.

4. Quality and Returns

4.1 The Supplier warrants that on delivery the Goods shall:

4.1.1 conform with their product specifications contained in the Summary of Product Characteristics included with the Goods and be free from defects; and

4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

4.2 The Supplier shall not be liable for the failure of any Goods to comply with the warranty set out in clause 4.1 where:

4.2.1 the defect arises because the Customer failed to follow the Supplier's instructions as to the storage of the Goods, or regulations or good trade practice regarding storage;

4.2.2 the defect arises as a result of the Supplier following any drawing, formula, design or specification supplied by the Customer;

4.2.3 the Customer alters or modifies such Goods or their packaging without the written consent of the Supplier;

4.2.4 the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or

4.2.5 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

4.3 Any Goods which fail to comply with the warranty set out in clause 4.1 may be returned to the Supplier, subject to clause 4.5.

4.4 At its sole discretion, the Supplier: (i) may accept the return of Goods in circumstances other than those at clause 4.3 (for example over-order, incorrect order, incorrect delivery, over-delivery); and (ii) may levy on the Customer a restocking charge of up to 25% of the value of the relevant Order where it accepts such a return and where there is no Supplier fault.

4.5 Subject to clauses 4.3 and 4.4, all returns shall be governed by the following:

4.5.1 returns requested by the Customer will only be accepted by the Supplier if such request is made no later than the next business day following the receipt by the Customer of the Goods in question. Such request shall be made by telephone to the Supplier's Customer Service department;

4.5.2 following receipt of a valid returns request in accordance with clause 4.5.1 above, the Supplier will confirm to the Customer whether the request is accepted, and shall advise the Customer of the appropriate procedure for return (or alternatively, disposal) of the Goods

accordingly. If the request is accepted, the Customer will be issued with a returns number which should be used in all documentation relative to the return;

4.5.3 subject to clause 4.5.4 below, if, the returns request is accepted, a credit will be issued to the Customer in respect of the affected Goods;

4.5.4 if the affected Goods were supplied to the Customer through a third-party supplier, the Goods must be returned directly to the third party supplier (provided that such supplier accepts the return);

4.5.5 all returns must be received at the Supplier's premises in accordance with the following: 4.5.5.1 no later than 5 working days after the date of delivery to the Customer where the Customer is an Unlicensed Customer; and 4.5.5.2 no later than 14 working days after the date of delivery to the Customer where the Customer is a Licensed Customer;

4.5.6 the Supplier shall meet the courier costs of returns where there is no Customer fault and may meet such costs in all other circumstances at its sole discretion, failing which the Customer shall meet such costs.

4.6 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.7 Except as set out in these Conditions, all warranties, conditions and other terms otherwise implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

4.8 These Conditions shall apply to any replacement Goods supplied by the Supplier.

5. Product Recalls

The Customer agrees to provide the Supplier with all necessary assistance in the event of a product recall, including the return of Goods in accordance with the Supplier's instructions. The Customer agrees that their account will only be credited after credit for such recalled goods has been received by the Supplier from any relevant third-party supplier or manufacturer.

6. Title and Risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

6.3.2 store the Goods separately from all other goods, products or stock held by the Customer so that they remain readily identifiable as the Supplier's property;

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 give the Supplier such information relating to the Goods as the Supplier may require from time to time;

6.4 provided always that the Customer may resell or use the Goods in the ordinary course of its business. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises occupied by the Customer where the Goods are stored in order to recover them.

7. Price and Payment

7.1 The price of the Goods shall be the price quoted on enquiry, or, if no price is quoted, the price set out in the Supplier's PDN or invoice.

7.2 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.3 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery, or in the case of Special Obtains Goods, 3-5 days after receipt of the Order.

7.4 The Supplier will provide the Customer with a monthly statement detailing any and all invoices issued during the previous month and the sum payable from the Customer to the Supplier which shall be paid by the Customer (including by way of direct debit if put in place for the Customer) within 30 days of the date of said statement, unless the Supplier has agreed different payment terms in writing with the Customer. Time of payment shall be of the essence. Any queries regarding the statement must be raised with the Supplier within 14 days of receipt by the Customer. Customers with an approved credit account shall be allowed a limited credit facility at the discretion of the Supplier. The Supplier reserves the right to suspend this facility at any time (including but not limited to as a result of non-payment).

7.5 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.5.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, regulatory or legislative changes, and increase in third party labour, materials and other manufacturing costs);

7.5.2 any request by the Customer to change the delivery date(s) or quantities or types of Goods ordered; or

7.5.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

7.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall be liable to pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement.

7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

8. Limitation of Liability

8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

8.1.2 fraud or fraudulent misrepresentation;

8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

8.1.4 any other matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty, or otherwise for any:

8.2.1 loss of profit;

8.2.2 loss of goodwill;

8.2.3 loss of business;

8.2.4 loss of business opportunity;

- 8.2.5 loss of anticipated saving;
- 8.2.6 loss or corruption of data or information;
- 8.2.7 special, indirect or consequential damage; and/or
- 8.2.8 loss relating to any advice or recommendation given by any of the Supplier's employees or agents concerning storage, use or application of any Goods, which has not been confirmed in writing by the Supplier.
- 8.3 Subject to clauses 8.1 and 8.2, the Supplier's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the net price invoiced for the Goods to which the breach relates.
9. **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 a party's 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.
10. **Cancellation**
- 10.1 If the Customer brings about, or becomes subject to any of the events listed in clause 10.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries to the Customer without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 10.2 For the purposes of clause 10.1, the relevant events are:
- 10.2.1 the Customer is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) 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;
- 10.2.2 the Customer 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;
- 10.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- 10.2.4 (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 Customer;
- 10.2.5 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.1 to clause 10.2.4 (inclusive);
- 10.2.6 the Customer fails to maintain any necessary licences and consents (including but not limited to a valid up to date GPhC registration), or if such licences are subject to suspension or revocation by the relevant authority;
- 10.2.7 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- 10.2.8 the Customer's financial position deteriorates to such an extent that in the Supplier's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 10.2.9 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;
- 10.2.10 the Customer breaches any exclusivity granted under the Contract; and
- 10.2.11 the Customer breaches any Sanctions Laws.
11. **General**
- 11.1 **Licences and information**
- 11.1.1 The Customer shall at all times have in place and maintain all necessary licences and consents, including but not limited to a valid and up to date GPhC registration. The Customer shall immediately notify the Supplier of any delays or changes to such registration;
- 11.1.2 The Supplier reserves the right to provide information relating to the Customer and any Orders in response to a request by the MHRA, NHS or other relevant regulatory authority at any time, and without notice to the Customer.
- 11.1.3 The Customer acknowledges that it, and not the Supplier, has responsibility for the making of (and for the terms of) any and all declarations or notifications as may be required to be made to any regulatory or other body as a result of the Supply of Goods by the Supplier to the Customer.
- 11.2 **Prevention of Bribery and Sanctions**
- 11.2.1 Each party shall comply with the provisions of the Bribery Act 2010 and shall take all measures necessary to ensure that its employees, consultants and contractors do not do anything on behalf of that party which would constitute a breach of the Bribery Act 2010 by that party.
- 11.2.2 Each party shall promptly report to the other party any incidents or allegations of bribery in connection with the Contract.
- 11.2.3 Each party acknowledges the existence of Sanctions Laws and shall ensure that it complies with all applicable Sanctions Laws to which either the Customer or the Supplier are subject, including those of any jurisdiction where either the Customer or the Supplier are located or incorporated.
- 11.2.4 Each party shall not take any action or refrain from taking any action which would, or would in the reasonable opinion of the party subject to Sanctions Laws, cause such party to breach such Sanctions Laws.
- 11.2.5 The Customer shall carry out appropriate due diligence with regards to any third party to whom the Goods are re-sold, re-supplied, re-exported, or re-transferred. The Customer shall ensure that it has no knowledge or reasonable cause to suspect that any activities related to the Goods will, either directly or indirectly, involve any Sanctioned Person or will otherwise be in breach of Sanctions Laws.
- 11.2.6 In the event of either party becoming a Sanctioned Person, the other Party may terminate any Contract with immediate effect and without payment of compensation.
- 11.3 **Assignment and subcontracting**
- 11.3.1 The Supplier 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;
- 11.3.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.4 **Notices**
- 11.4.1 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 or fax.
- 11.4.2 A notice or other communication shall be deemed to have been received:
- 11.4.2.1 if delivered personally, when left at the address referred to in clause 11.4.1;
- 11.4.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting;
- 11.4.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
- 11.4.2.4 if sent by, by fax, one business day after transmission.
- 11.4.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.5 **Severance.** If any court 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.
- 11.6 **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.
- 11.7 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.8 **Variation.** Except as set out in these Conditions, any variation to the Contract shall only be binding when agreed in writing by the Customer and the Supplier.
- 11.9 **Entire Agreement:** The Contract is the entire agreement between the parties and supersedes all and any previous agreements, understandings, warranties, representations and undertakings (whether written or oral) relating to its subject matter. Subject always to clause 8.1.2, each party agrees and acknowledges that in entering into the Contract it has not relied on, nor been induced by, and shall have no remedies in respect of, any statement, representation or warranty not expressed in this Contract.
- 11.10 **Governing law and jurisdiction.** If the Supplier is a Scottish company, the Contract is governed by Scots law and the parties irrevocably submit to the exclusive jurisdiction of the Scottish courts. Otherwise, the Contract is governed by the laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.