

Beaphar UK Limited - Terms and Conditions of Sale - January 2021 Edition

1. INTERPRETATION

1.1 Definitions:

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

"**Conditions**" means the terms and conditions set out in this document as amended from time to time.

"**Contract**" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"**Customer**" means the person or firm who purchases the Goods from the Supplier.

"**Force Majeure Event**" means an event, circumstance or cause beyond a party's reasonable control.

"**Goods**" means the goods (or any part of them) set out in the Order.

"**Order**" means the Customer's order for the Goods, as provided by phone, email or EDI and amended by the Order Acceptance (if applicable)

"**Order Acceptance**" means the Supplier's written acceptance in accordance with clause 2.3.

"**Specification**" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

"**Supplier**" means Beaphar UK Limited (registered in England and Wales with company number 02926721).

1.2 Interpretation:

1.2.1A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5A reference to **writing** or **written** includes email.

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 are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order (or, if earlier, when the Supplier commences performance of the Order), at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

3. GOODS

3.1 The Goods are described in the Specification.

3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.

4.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location (save where the Delivery Location is the Supplier's premises, in which case delivery is completed on completion of loading of the Goods).

4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to accept delivery of the Goods within one Business Day 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:

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

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

4.6 If five Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

4.7 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.

5. QUALITY

5.1 The Supplier warrants that on delivery the Goods shall:

5.1.1 conform in all material respects with the Specification; and

5.1.2 be free from material defects.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to the Supplier within 2 Business Days of delivery (and giving reasonable detail) that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the Customer opened (save the opening of outer packaging to discover a defect) and/or incorporated the Goods into other goods/products;

5.3.3 the defect arises because the Customer failed to follow the Supplier's (or the Good's manufacturer) oral or written instructions as to the storage, use and maintenance of the Goods, and good industry practice regarding the same;

5.3.4 the defect arises as a result of the Supplier following any design or Specification supplied by the Customer;

5.3.5 the Customer alters or repairs such Goods without the written consent of the Supplier;

5.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or usage conditions; or

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

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 or any other defect or deficiency in the Goods.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

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 receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

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

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1.3 to clause 9.1.5; and

6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:

6.3.5.1 the Goods; and

6.3.5.2 the ongoing financial position of the Customer.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party 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 set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

7.2 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:

7.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

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

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

7.3 The price of the Goods:

7.3.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

7.3.2 excludes the costs and charges of packaging, insurance and transport of the Goods, which may be invoiced to the Customer where applicable. Unless the Supplier agrees otherwise in writing, delivery charges will be applied to all orders below £150 within the United Kingdom and for all orders of any value outside the United Kingdom.

7.4 The Supplier may invoice the Customer for the Goods on or at any time after the date of acceptance of the Order (save to the extent other credit terms are agreed between the parties in writing).

7.5 The Customer shall pay each invoice submitted by the Supplier:

7.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and

7.5.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

7.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. LIMITATION OF LIABILITY

8.1 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.2 Nothing in the Contract limits any liability which cannot legally be limited.

8.3 Subject to clause 8.2, the Supplier's total aggregate liability to the Customer arising out of or relating to the Contract shall not exceed the sum of the total price paid for Goods supplied hereunder.

8.4 Subject to clause 8.2 the Supplier shall have no liability to the Customer arising out of or in relation to the Contract for any of the following (in each case save for clause 8.4.8, whether direct or indirect):

8.4.1 loss of profits or revenue;

8.4.2 loss of sales, business or opportunities;

8.4.3 loss of agreements or contracts;

8.4.4 loss of anticipated savings or increase in costs;

8.4.5 loss of use or corruption of software, data or information;

8.4.6 loss of or damage to goodwill or reputation;

8.4.7 losses under the Customer's third party contracts; and

8.4.8 indirect or consequential loss.

8.5 The Supplier has given commitments as to compliance of the Services with relevant specifications in clause 5. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and any other statutory or implied warranties or conditions are, to the fullest extent permitted by law, excluded from the Contract.

8.6 If the Customer is not the sole or ultimate recipient or end user of the Goods (each other such person being an "End User"), the Customer shall indemnify and hold the Supplier harmless from and against any liability to such End User which is in excess of and/or duplication of liability owed to the Customer under the Contract.

8.7 This clause 8 shall survive termination of the Contract.

9. TERMINATION

9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:

9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

9.1.2 the Customer fails to pay all sums due under this clause on the due date;

9.1.3 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

9.1.4 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

9.1.5 the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1.3 to clause 9.1.5, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted and/or actions performed in respect of Goods not yet supplied (including reasonable charges for the Supplier's personnel's time), the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 6 weeks, the Supplier may terminate the Contract by giving 5 days' written notice to the Customer.

11. GENERAL

11.1 Assignment and other dealings.

11.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

11.2 Confidentiality.

11.2.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.2.

11.2.2 Each party may disclose the other party's confidential information:

11.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and

11.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11.3 Entire agreement.

11.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

11.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.5 **Waiver.** 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.7 Notices.

11.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

11.7.1.1 delivered by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

11.7.1.2 sent by email to the address specified in the Order.

11.7.2 Any notice shall be deemed to have been received:

11.7.2.1 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; and

11.7.2.2 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.7.2.2 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

11.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

11.8 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

11.9 **Sales Restrictions.** The Customer warrants that it will comply in full with all applicable laws, regulations and guidance relating to its storage, use or onward sale of the Goods. Without prejudice to the generality of the preceding sentence:

11.9.1 Where the Goods comprise veterinary medicines, the Customer warrants that it holds appropriate Wholesale Dealers Authorisations for the applicable Goods;

11.9.2 The Customer acknowledges that the Goods are produced and packaged in accordance with the rules and regulations in force in the United Kingdom at the time of formation of the Contract, and may not comply with the rules and regulations of other countries (or the rules of regulations of the United Kingdom in the future). The Customer acknowledges and undertakes that it will be entirely responsible for verifying and complying with any legal and/or regulatory requirements in respect of the Goods applicable either outside the United Kingdom or as varied within the United Kingdom after the date of formation of the Contract; and

11.9.3 The Customer hereby indemnifies and holds the Supplier harmless from and against any and all costs, losses, fines, penalties and any other liabilities arising out of any partial or complete failure by the Customer to comply with its obligations under this clause 11.9 or any other provision of the Contract.

11.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.