

EUSA PHARMA (UK) LIMITED – SUCURSAL EM PORTUGAL (“EUSA”) STANDARD TERMS AND CONDITIONS OF SALE TO CUSTOMERS

1. In these Standard Terms and Conditions of Sale, unless the context requires otherwise, the following words and expressions shall have the following meanings:

- (a) **“Customer”** means the person, firm, company, institution or legal entity purchasing the Products from EUSA under the terms of the Supply Contract.
- (b) **“Products”** means the pharmaceutical products and/or medical devices supplied directly by EUSA, the sale and purchase of which is governed by the Supply Contract.
- (c) **“Main Supply Contract”** means the contract (if any) between EUSA and the Customer setting out other general terms and conditions applicable to the purchases of Products made by the Customer.
- (d) **“Standard Terms and Conditions of Sale”** means the terms and conditions set out herewith.
- (e) **“Supply Contract”** means the Main Supply Contract (if any) together with the Standard Terms and Conditions of Sale entered into between EUSA and the Customer from time to time for the sale and purchase of the Products.

CUSTOMER ORDERS

2. All Products sold by EUSA are sold under the Supply Contract and the placing of an order for Products by a Customer with EUSA shall be deemed to mean acceptance by the Customer of the Supply Contract. Acceptance of the Customer’s order by EUSA is subject to (without limitation) a satisfactory credit check carried out by (or on behalf of) EUSA and supply of the Products being available and not sold. EUSA reserves the right not to accept Customer orders (in full or in part) at any time and for any reason. When EUSA accepts orders placed by the employees, agents or contractors of the Customer, EUSA shall not be responsible for vetting the authorisation of such employee, agent or contractor and EUSA shall not be liable to the Customer for any financial losses incurred by virtue of EUSA’s acceptance of such an order. There are no minimum order quantities for the Products. However, EUSA may charge the Customer additional fees/charges (including delivery or carriage costs) if EUSA considers that the size of the orders processed for Products are small. Any additional fees/charges shall be communicated to the Customer in advance for approval prior to processing such order.

PRICE AND PAYMENT

3. The price payable by the Customer to EUSA for the Products shall be the price stated on the invoice, or, if no price is quoted, the price set out in EUSA’s published price list in force as at the date of delivery. Unless otherwise stated, the price for the Products are exclusive of Value Added Tax and other similar turnover taxes that are required by local law to be disclosed as a separate item on the relevant invoice. EUSA will not accept any claims for incorrect Value Added Tax on sales invoices unless those claims are made within a three year period from the date of the invoice containing the incorrect Value Added Tax amount. EUSA may, by giving notice to the Customer in writing at any time up to 5 Business Days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to any factor beyond EUSA’s control (including foreign exchange fluctuations, increase in taxes and duties, and increases in labour, materials and other manufacturing costs), any request by the Customer to change the delivery dates(s), quantities or types of Products ordered or any delay caused by any instructions of the Customer to give the Supplier adequate or accurate information or instructions. Unless otherwise agreed in writing by EUSA or required by local law, the payment of all sums due to EUSA for the Products shall be made by the Customer to EUSA within thirty (30) days of the invoice date. It is essential to the Supply Contract that the Customer pays for the Products on time and in full in cleared funds. Without prejudice to any other right or remedy available to EUSA, EUSA shall be entitled to charge interest at the rate of four per cent (4%) per annum above HSBC’s Bank base rate on a daily basis on all amounts owed to EUSA and not paid when due. Any credit terms extended by EUSA to the Customer are subject to review by (or on behalf of) EUSA from time to time. EUSA reserve the right to vary or withdraw credit facilities at any time and without prior written notice. To facilitate this review, the Customer agrees to provide to EUSA (and/or any agent or sub-contractor acting on behalf of EUSA) on request up-to-date financial information. The Customer shall pay all amounts due in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). EUSA 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 EUSA to the Customer.

DELIVERY AND FORCE MAJEURE

4. The Customer shall determine a place to receive delivery and shall be responsible for the security of that delivery location. EUSA shall ensure that it or its carrier delivers the Products to the requested delivery location only if in EUSA’s reasonable opinion it is suitable, safe, secure and complies with any regulatory registration requirements in full. The Customer shall notify EUSA of the delivery address in advance. Delivery dates are estimates only and the time of delivery is not of the essence. EUSA shall not be liable for any loss whatsoever or howsoever arising caused by late or non-delivery of the Products. EUSA reserves the right to make delivery of the Products by instalments. A Customer shall either itself or by its duly authorised representative sign the delivery note as acknowledgement of full delivery. On delivery to the delivery location nominated by the Customer, EUSA shall be entitled to assume that any signature given is that of a duly authorised representative. EUSA reserves the right to make a reasonable delivery/carriage charge on all urgent deliveries of Products made at the request of a Customer. EUSA shall have the right to cancel or delay deliveries or to reduce the amount delivered, if EUSA is prevented from or hindered in or delayed in manufacturing or in delivering by the normal route or means of delivery, the Products covered by the Customer’s order, through any circumstances beyond its reasonable control, including but not limited to strikes, lock-outs, accidents, reductions or unavailability of power at a manufacturing plant, break-down of plant machinery, or shortage or unavailability of Products from the normal source or route of supply. EUSA shall be under no liability arising out of its failure to deliver.

TITLE AND RISK

5(a) Notwithstanding delivery, legal and beneficial title to the Products shall remain with EUSA until payment for the Products is received in full and cleared funds by EUSA. Until title to the Products passes to the Customer, the Customer shall keep the Products in satisfactory condition as bailee on a fiduciary basis for and on behalf of EUSA. The Customer shall during such time (i) keep (at no cost to EUSA) the Products separate and readily identified as EUSA’s at a location belonging to the Customer (or at a location agreed with EUSA), and (ii) not remove, deface or obscure in any way any identifying mark or packaging on or relating to the Products. The Customer may sell the Products before legal and beneficial title passes to the Customer solely on the following conditions; any sale is in the ordinary course of the Customer’s business and the Customer holds the amount of the proceeds that represents the amount owed by the Customer to EUSA on EUSA’s behalf; and any sale is a sale on the Customer’s own behalf (not on behalf of EUSA) and the Customer deals as a principal when making the sale. If a Customer defaults in payment on the due date or if any event specified in Section 15 shall occur, EUSA shall be entitled (without prejudice to its other rights under the Supply Contract) at any time to enter upon any land or premises where the Products are located for the time being to recover the Products.

5(b) The risk in the Products shall pass to a Customer at the point of delivery, which shall be the point at which the Products are off loaded from the carrier’s vehicle at the delivery location specified by the Customer and approved by EUSA. EUSA shall, notwithstanding that legal and beneficial title in the Products is retained by EUSA as stated above, have no responsibility in respect of the safe custody of the Products thereafter.

5(c) The Customer should insure the Products against such risks (if any) that the Customer thinks appropriate. In the absence of written advice from the Customer to EUSA in accordance with Section 8 below, the Products shall be deemed to have been delivered and accepted by the Customer complete and in a satisfactory condition.

WARRANTY

Updated as at 14.11.18

6. EUSA warrants that at the point of delivery the Products have been manufactured with reasonable care and skill and are of satisfactory quality and conform in all material respects with their description and are fit for the purpose for which they are manufactured. EUSA will not be liable for any faults in the Products caused by the Customer as a result of deliberate damage, negligence, failure to follow EUSA's instructions (including without limitation storage requirements) or misusing the Products.

CREDIT AND RETURN

7. EUSA will only accept returns where (i) the Product is damaged, (ii) a greater quantity of Product is delivered than ordered as a result of an error by EUSA or (iii) incorrect Product is delivered as a result of an error by EUSA. Notwithstanding any other provision of the Supply Contract, Products subject to recall will be credited or replaced in full by EUSA where relevant.

LIMITATION OF LIABILITY

8(a) EUSA shall have no liability for any defects or shortages that would be apparent on careful inspection of the Products on delivery unless a written complaint is sent to EUSA within three (3) days of delivery of the Product. The Customer must retain all damaged Products and/or packaging for inspection by EUSA. EUSA's liability in respect of defects or shortages shall be limited to either providing replacement Products or giving credit for such Products as determined by EUSA.

8(b) Subject to Section 6, EUSA shall have no further liability in respect of the Products or any defects therein or any shortages in the quantity of Products delivered and all representations, conditions, guarantees and warranties whether express or implied by law as to the quantity, quality of the Products or their fitness for a particular purpose or otherwise are expressly excluded except insofar as such exclusion is prevented by law. Nothing in the Supply Contract shall be deemed to limit or exclude the liability of either EUSA or the Customer for death or personal injury caused by their negligence or the negligence of their respective employees, agents or subcontractors (as applicable); or for fraud or fraudulent misrepresentation. EUSA's liability in respect of the Products hereunder (whether arising under or in connection with the Supply Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise.), subject to Section 8(a) above, shall in no circumstances exceed the purchase price of the Products nor extend to the Customer's loss of profits, increased cost of working or any other consequential loss.

MARKETING AND DATA PROTECTION

9. EUSA may use personal data collected from the Customer for administration, customer services, risk assessment, VAT reporting, product information updates, commercial information updates, and credit checking. By providing EUSA with personal data under any applicable Order, the Customer recognises that EUSA has a legitimate interest in the processing of that data, including sensitive personal data, for the purposes of meeting its obligations under the Supply Contract. The Customer also consents to the transferring of Customer personal data to countries or jurisdictions which do not provide the same level of data protection as the UK, if necessary for the purposes set out in this Section 9. In the event that EUSA makes such transfer, EUSA will, if appropriate, put a contract in place to ensure that Customer information is protected.

NOTICES

10. Any notice to be given to EUSA under the Supply Contract shall be made in writing for the attention of Legal Department and sent to: EUSA Pharma (UK) Ltd, Breakspear Park, Breakspear Way, Hemel Hempstead, HP2 4TZ and shall be deemed to have been duly given, if sent by first class post, 48 hours after posting or if by email (before 16.00 on a Business Day in London), at the time of sending. Any notice to be given to the Customer under the Supply Contract shall be made in writing and sent to the delivery address specified by the Customer and approved by EUSA and shall be deemed to have been duly given, if sent by first class post, 48 hours after posting or if by email (before 16.00 on a Business Day in London), at the time of sending.

INSURANCES

11. The Customer shall at its own cost maintain throughout the period of the Supply Contract general commercial liability insurance cover with respect to the Products and insurance against loss and damage of the Products in such amounts that is normally maintained by comparable businesses sufficient to meet its obligations under the Supply Contract.

GOVERNING LAW

11. The Supply Contract shall be governed by the laws of Portugal. EUSA and the Customer shall submit to the exclusive jurisdiction of the courts of Portugal.

ASSIGNMENT

12. The Supply Contract is personal to the Customer. The Customer shall not assign, delegate, subcontract, transfer, charge or otherwise dispose of all of its rights and responsibilities under the Supply Contract without the prior written consent of EUSA. Such consent will not relieve the Customer from any liability or obligation under this Agreement.

RIGHTS OF THIRD PARTIES

13. Other than a company of the EUSA group, a person who is not a party to the Supply Contract has no right to enforce any term of the Supply Contract.

VARIATION, SEVERANCE AND WAIVER

14(a) The Main Supply Contract (if any) and the Standard Terms and Conditions of Sale form part of the Supply Contract and shall all have the same force and effect. However, to the extent that any provision of the Main Supply Contract (if any) and/or the Standard Terms and Conditions of Sale are inconsistent or conflicts with another provision then, the following order of precedence shall apply at all times: (1) the provisions of the Main Supply Contract (if any); and (2) the provisions of the Standard Terms and Conditions of Sale.

14(b) Any purported addition, modification, variation or exclusion of the provisions of the Supply Contract (whether contained in any document of a Customer or otherwise) shall have no effect unless agreed in writing in advance by EUSA. Unless otherwise stated EUSA reserves the right to amend, vary or alter the provisions of the Supply Contract at any time, upon written notice to the Customer.

14(c) The consent of any or all EUSA group companies other than EUSA is not required for any variation (including any release or compromise of liability) of the Supply Contract. The invalidity or unenforceability of any provision of the Supply Contract shall not affect the validity or enforceability of any other provision which shall remain in full force and effect. The failure by EUSA to enforce any right or provision contained in the Supply Contract shall not constitute a waiver of that right or provision.

TERMINATION AND SUSPENSION

15. Subject to any terms under the Main Supply Contract, EUSA may terminate the Supply Contract at any time by giving one (1) month's prior written notice to the Customer. In the event that: the Customer makes any voluntary arrangement with its creditors or becomes insolvent or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administrative order or has a winding up petition made or passes a resolution for voluntary winding up or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or an encumbrancer takes possession of any of the property or assets of the Customer or a receiver or a liquidator is appointed; or the Customer ceases or threatens to cease, to carry on business; or EUSA has reason to believe (acting reasonably) that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly; or the Customer commits a material or serious breach of the Supply Contract, then, without prejudice to any other right or remedy available to EUSA, EUSA shall be entitled to: (a) terminate the Supply Contract, and/or (b) suspend any further deliveries of Products with immediate effect, and/or enter without prior notice any premises where the Products may be, and to repossess the Products so as to discharge any sums owed to EUSA by the Customer under the Supply Contract, and the Customer's right to sell or otherwise dispose of the Products shall terminate immediately and all sums owing to EUSA by the Customer shall become immediately due and payable without the need to give any prior notice notwithstanding any previous arrangement or agreement to the contrary.

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ADVERSE EVENTS & INCIDENTS

16. Customer shall notify EUSA of any adverse event (i.e. untoward medical occurrence in a patient taking a drug) or adverse incident (i.e. malfunction, deterioration, unanticipated side effect or interaction with another substance in a patient taking a medical device) reported to Customer relating to a EUSA Product within 1 business day by email (safety@eusapharma.com).

RECALL

17. If required the Customer shall participate in mock and/or real recalls initiated by EUSA for specific Products and provide inventory details and downstream distribution details of specified Product on time as required by EUSA. The Customer's reasonable costs for any mock recall will be reimbursed by EUSA.

RETURNS

18. A Product with expired shelf-life may be accepted by EUSA for a return provided the Product is a pharmaceutical product, the Product has not been used or opened, and the Product is returned to EUSA within ninety (90) days after the Product has expired. Customer shall pre-notify EUSA of any returns. EUSA shall credit the Products returned by the Customer.

ANTI-CORRUPTION

19. Customer shall conduct at all times its activity in full compliance with local anti-bribery laws and all other applicable anti-bribery laws applicable under the Supply Contract.