

# TERMS AND CONDITIONS FOR THE PROVISION OF CREDIT COLLECTION SERVICES IN REPUBLIC OF IRELAND



## 1. DEFINITIONS & INTERPRETATIONS

1.1. The following words and/or expressions shall, for the purposes of these Terms and Conditions, have the following meanings:

**"Associated Company"** means any company which is, in relation to another company, its holding company or is subsidiary or a subsidiary of its holding company in accordance with section 155 of the Companies Act 1963 (as amended);

**"Business Day"** means any day which is not a Saturday, Sunday or public holiday in the Territory, and **"Business Days"** will be construed accordingly;

**"Collection Services"** means the provision of invoicing and cash collection services in respect of the Products sold to End Customers, as more particularly described in clause 3;

**"Confidential Information"** means any and all information of any nature in whatsoever form relating to either party's respective businesses, and their respective customers, competitors, shareholders, associates, prospective business(es), technical processes, intellectual property or finances, or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into the other party's possession by virtue of the Contract or which could reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from any such information.

**"Contract"** means the letter agreement between UD Consumer and the Supplier for the Collection Services which incorporate these Terms;

**"Supplier"** shall mean the manufacturer and/or supplier of Products named in the Contract and to whom UD Consumer provides the Collection Services;

**"Data File"** has the meaning given in clause 3.1.2;

**"End Customers"** means, unless otherwise specified in the Contract, retail pharmacies in the Territory who order the Products from the Supplier and to whom UD Consumer issues an invoice to in respect of the Products and collects payment for such Products, in each case in accordance with these Conditions, and **"End Customer"** shall be construed accordingly;

**"Fees"** means the fees charged by UD Consumer to the Supplier in connection with the provision of Collection Services in accordance with these Conditions and as more particularly set out in the Contract;

**"Losses"** means all and any costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, losses, damages, claims, demands or legal costs (on a full indemnity basis) and judgments;

**"Net Sales"** means the net sales of the Products to End Customers as evidenced by ;

**"Products"** means the Supplier's products from time to time that are purchased by End Customers and are the subject of the Collection Services as more particularly set out in the Contract;

**"Product Prices"** means the price payable by UD Consumer to the Supplier in respect of the Products, being the price actually invoiced by UD Consumer to the End Customers in accordance with the Data File;

**"Terms"** means these terms and conditions;

**"Territory"** means the Republic of Ireland;

**"UD Consumer"** means Blackhall Pharmaceutical Distributors Limited or any Associated Company that is expressly identified as UD Consumer in the Contract.

1.2. Any reference to UD Consumer in these Terms shall be deemed to be a reference to any Associated Company that is identified as UD Consumer in the Contract.

1.3. A **"person"** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); references to a party includes its successors or permitted assigns; any phrase introduced by the terms "including, include, in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; use of the singular includes the plural and vice versa; use of gender includes the other genders.

1.4. Any reference to a statute, statutory provision or subordinate legislation (**"legislation"**) shall (except where the context otherwise requires) be construed as referring to (i) such legislation as amended and in force from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation, and (ii) any former legislation which re-enacts, consolidates or enacts in rewritten form.

## 2. APPOINTMENT & PROVISION OF SERVICES

2.1. The Supplier acknowledges and accepts that it has appointed UD Consumer to act the Supplier's provider of Collection Services in the Territory.

2.2. The Contract shall apply to the exclusion of all other terms and conditions, including any terms or conditions which the Supplier may purport to apply and/or seek to incorporate.

2.3. In the event of any Conflict between the Contract and these Terms, the Contract shall prevail.

## 3. CUSTOMER'S OBLIGATIONS

3.1. In connection with the provision of Collection Services, the Supplier acknowledges and accepts that it shall be solely responsible for:

3.1.1. the order taking, batch control, distribution and physical delivery of any Products ordered by an End Customer to the End Customer and shall, upon demand by UD Consumer, produce proof of delivery in respect of Products ordered by End Customer;

3.1.2. the provision to UD Consumer of a file (in such format as may be directed by UD Consumer from time to time) with accurate details of Products shipped by the Supplier to End Customers which shall include (i) a sales order number, (ii) complete and accurate details of the End Customer, (iii) the Products purchased by the End Customer and the applicable price charged (including VAT, where applicable), and (iv) such other information as UD Consumer may reasonably require from time to time (the **"Data File"**);

3.1.3. any and all bad debts that arise as a result of End Customers not paying the invoices issued by UD Consumer the Products shall be for the account of the Supplier in accordance with clause 6 and the Supplier acknowledges that the credit risk in respect of End Customers shall at all times be the Supplier's responsibility;

3.1.4. the pricing at which the Products are sold to End Customers and any related discounts, seasonal bonuses or otherwise offered to End Customers;

3.1.5. the management of returns in respect of the Products and agreeing any refunds and/or credits with End Customers in connection with the sale of the Products; and

3.1.6. ensuring the appropriate VAT treatment is applied in connection with the sale of Products to End Customers and in this regard, the Supplier acknowledges that UD Consumer relies on the Supplier's Data File in connection with the invoices UD Consumer

issues to End Customers and the VAT treatment applied in connection with same.

3.2. The Supplier shall at all times co-operate with UD Consumer in good faith and provide such assistance as is reasonable required in connection with the delivery by UD Consumer of the Collection Services, including (but not limited to) promptly responding to any queries and/or issues raised by UD Consumer from time to time.

3.3. The Supplier warrants and represents that all data provided to UD Consumer in the Data File (or otherwise, where applicable) shall be accurate, complete and free from any viruses and shall indemnify and hold UD Consumer harmless in connection with any Losses that might be incurred as a result of any errors and/or omissions within the Data File.

#### 4. RISK & TITLE

Risk in the Products shall remain at all times with the Supplier given that UD Consumer is never in possession of the Products. Title in the Products shall remain with the Supplier until such time as the Supplier provides the Data File to UD Consumer, at which point, title in those Products identified as ordered by the relevant End Customer(s) shall pass to UD Consumer so as to permit UD Consumer to raise invoices with End Customers in respect of the sale of such Products.

#### 5. PROVISION OF COLLECTION SERVICES

5.1. The Collection Services shall comprise of UD Consumer providing the following services to the Supplier, namely:

5.1.1. the downloading of the Data File to UD Consumer's system so as to enable UD Consumer to invoice End Customers in respect of Products identified in such Data File as ordered and delivered to the End Customers;

5.1.2. the issuing of invoices to the End Customers in respect of Products ordered from and delivered by the Supplier to End Customers;

5.1.3. subject to clause 6, the collection of monies owing from End Customers pursuant to the invoices issued in accordance with clause 5.1.2; and

5.1.4. notify the Supplier as soon as is reasonably practicable in respect of any adverse events and/or pharmacovigilance issues that may be notified from time to time to UD Consumer by End Customers.

5.2. Save as set out above or as more particular set out in the Contract, UD Consumer shall not be deemed to provide any other services outside of those expressly set out in these Terms and/or the Contract.

5.3. UD Consumer warrants that it shall provide the Collection Services using reasonable skill and care. All other conditions, warranties or other terms which might have effect between the parties in respect of the Collection Services or may be implied or incorporated into the Contract (outside of those expressly agreed in writing), whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law.

#### 6. CREDIT RISK

6.1. The Supplier shall at all times remain on risk in respect of any bad debts that may be incurred in the provision of the Collection Services. Where an End Customer fails to pay the invoices issued by UD Consumer in full and on time (a "Bad Debt"), UD Consumer shall use reasonable commercial efforts to collect payment from the End Customer in respect of the Bad Debt, it being acknowledged by the Supplier that this shall not require UD Consumer to initiate legal proceedings against the End Customer and/or issue a formal statutory demand in respect of the Bad Debt.

6.2. After one hundred and twenty (120) day from the date of the invoice in respect of which the Bad Debt has arisen, UD Consumer shall be entitled to raise an invoice as against the Supplier for the full invoiced price of the Bad Debt less the percentage discount more specifically agreed in the Contract (or in the absence of such discount being agreed in writing, less three per cent (3%) of the invoiced price).

6.3. UD Consumer shall seek to inform the Supplier as soon as is reasonable practicable of any material Bad Debts as and when they arise.

6.4. Where the Supplier has reimbursed UD Consumer in full in connection with any Bad Debts in accordance with this clause 6, UD Consumer shall transfer title in the Products to the Supplier so as to permit the Supplier to, *inter alia*, seek repossession of the Products to which the Bad Debt relates.

#### 7. Invoicing and Payment

7.1. All Product Prices shall be inclusive of all carriage, packaging and insurance, unless expressed otherwise in writing. Any and all payments made by either party to the other pursuant to the Contract exclude Value Added Tax (VAT) and all other taxes or duties, unless otherwise stated in writing.

7.2. Unless otherwise agreed, payment of the Product Price shall be made against the Supplier's invoices for same, which shall be calculated and invoiced monthly in arrears by way of a single invoice addressed to UD Consumer. Payment of Supplier's invoices for the Product Prices shall be made within period specified in Contract or where not specified, within sixty (60) days from the end of the month in which the invoice is issued.

7.3. UD Consumer's Fees for the provision of the Collection Services shall, unless otherwise agreed in writing, be a percentage of the Net Sales of the Products to End Customers as is more particularly set out in the Contract. In the absence of such Fees being specified in the Contract in writing, the Fees payable for the provision of the Collection Services shall be ten per cent (10%) of the Net Sales of Products to the End Customers.

7.4. UD Consumer may set off against the Product Price (including any applicable VAT payable) its Fees and/or any charges agreed by the parties or any lawful set off or counterclaim to which UD Consumer may at any time be entitled (including, but not limited to, any Bad Debts in accordance with clause 6).

7.5. To the extent any Fees are not set off by UD Consumer as against amount due to Supplier, Supplier shall pay the Fees, together with any other charges, costs or expenses payable to UD Consumer (including, but not limited to, any Bad Debts owing pursuant to Clause 6), which shall be calculated and invoiced monthly in arrears by way of a single invoice addressed to Supplier. Payment of UD Consumer's invoices for Fees (which are not set off against payment of Product Price), and any other charges, costs or expenses incurred by Supplier, shall be made by Supplier within thirty (30) days of the invoice date (or as otherwise agreed in writing).

7.6. Interest shall be payable on any amounts properly due from one party to the other from the date on which payment was due to the date on which it is made at the rate of no more than three per cent (3%) per annum over the base rate for the time being of Ulster Bank (Ireland) Limited.

#### 8. Term & Termination

8.1. The term in which UD Consumer shall provide the Collection Services is more particularly set out in the Contract. Where the Contract does not identify the term, the term shall be deemed to be on a rolling basis subject to (i) UD Consumer being entitled to terminate the Contract on three (3) months prior written notice, and (ii) the Supplier being entitled to terminate the Contract on six (6) months prior written notice.

8.2. Either party may end the Contract immediately by giving written notice to the other party if the other party commits a material breach of the Contract and, where the breach is incapable of being remedied, fails to remedy the breach within 30 days of that written notice.

8.3. Either party may end the Contract immediately by giving written notice to the other if the other ceases (or threatens to cease) to trade, goes into liquidation or bankruptcy as applicable (or has a petition for its winding up or bankruptcy presented or passes a company

resolution for its winding up), goes into examinership, has a receiver appointed over its assets, proposes an arrangement or compromise with people whom it owes money or enters into (or proposes to enter into) any insolvency related event in any jurisdiction analogous to any of the above.

8.4. The election by either party to terminate does not affect or limit that party's right to pursue any other legal or equitable remedies available to them.

#### **9. Consequences on Termination**

9.1. Following termination of the Contract:

9.1.1. each party shall keep any accrued rights, obligations or liabilities to the extent arising prior to the end of the Contract;

9.1.2. those terms of the Contract which are expressed, or by implication are intended to continue in force on or following the end of the Contract shall do so.

9.2. On the date the Contract is ended, each party shall promptly return any Confidential Information, data or property of the other party to that other party.

#### **10. Indemnity**

10.1. Supplier shall indemnify and keep UD Consumer indemnified from and against any and all Losses that UD Consumer incurs or suffers as a consequence of any liability incurred by UD Consumer in respect of (i) damage to property, death or personal injury arising in connection with the Products, (ii) in connection with the recall of any Product, (iii) in connection with any claims that the Products infringe the intellectual property rights of a third party.

#### **11. LIMITATION OF LIABILITY (YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION)**

11.1. Nothing in these Terms shall limit or exclude UD Consumer's liability for:

11.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

11.1.2. fraud or fraudulent misrepresentation; or

11.1.3. such liability that cannot, as a matter of law, be limited.

11.2. Subject to paragraph 11.1.1:

11.2.1. UD Consumer shall under no circumstances whatever be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business or business opportunity, loss of reputation of goodwill, loss of data or any indirect or consequential loss arising under or in connection with the Contract ; and

11.2.2. UD Consumer's total liability to the Supplier in respect of any one claim or series of connected claims under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Fees received by UD Consumer in the twelve (12) months immediately preceding the claim (or series of connected claims) or, if greater, €100,000 (one hundred thousand Euros).

11.3. UD's charges to Supplier are determined on the basis of the exclusions from and limitations of liability contained herein and Supplier acknowledges that these exclusions and limitations are reasonable because of (amongst other matters) the likelihood that otherwise the amount of damages awardable to Supplier for breach by, or negligent performance by, UD Consumer of the Contract may be disproportionate to the monies being made by UD Consumer in connection with same.

11.4. This Condition 13 shall survive termination of the Contract.

#### **12. Confidentiality**

12.1. A party (a "receiving party") shall keep in strict confidence all Confidential Information disclosed to the receiving party by the other party (a "disclosing party"), its employees, agents or subcontractors. The receiving party shall only disclose such Confidential Information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations

under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This paragraph 12 shall survive termination of the Contract.

#### **13. NOTICES**

13.1. Any notices must be in writing and may be delivered only by hand, special delivery post or fax, addressed to the recipient at its registered office, or to any other address or fax number as notified in writing to the sender by the other party. Notices shall be deemed to be served on the Business Day following receipt of the recipient of the notice.

#### **14. SUBCONTRACTING & ASSIGNMENT**

14.1. UD Consumer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

14.2. The Supplier shall not, without the prior written consent of UD Consumer assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

#### **15. FORCE MAJEURE**

15.1. For the purposes of these Terms, Force Majeure Event means an event beyond the reasonable control of a party including but not limited to strikes, failure of a utility service or transport network, act of God, war, riot, civil commotion, compliance with any new law or governmental order, rule, regulation or direction, accident, fire, flood, storm or adverse weather conditions.

15.2. Neither party shall be liable to the other party as a result of any delay or failure to perform their respective obligations under the Contract as a result of a Force Majeure Event.

15.3. If the Force Majeure Event prevents a party from performing its obligations under the Contract for more than six weeks, the affected party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the party subject to the Force Majeure Event.

#### **16. GOVERNING LAW AND JURISDICTION**

16.1. The Contract shall be governed by and construed in accordance with the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Irish courts in the event of any dispute.

#### **17. GENERAL**

17.1. If any part of the Contract is found by any court or authority to be illegal, invalid or unenforceable then that part will be removed from the Contract to the extent required, but the other parts of the Contract will remain in full force and effect.

17.2. If, at any time, either party fails to exercise any right or remedy in connection with any part of the Contract, this will not operate as a waiver of that right or remedy.

17.3. Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier

17.4. Nothing in the Contract is intended or shall be deemed to constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose.