

## ASPEN OSS B.V. GENERAL CONDITIONS OF SALES TO API CUSTOMERS

### 1. General; Applicability

- 1.1. It is a condition of offer or, as the case may be, acceptance by Supplier that these General Conditions are applicable to all offers, order confirmations and deliveries by Supplier of Products and shall form an integral part of the Agreement between Supplier and Purchaser. No general or other conditions shall be applicable or set aside these General Conditions unless expressly agreed to by Supplier in writing.
- 1.2. Unless explicitly stated otherwise, Supplier is not obliged to provide Purchaser with quotations, Supplier's quotations are without engagement and Supplier is not obliged to accept Purchaser's order.
- 1.3. In the event of any conflict between these General Conditions and the provisions of Supplier's offer or Confirmed Purchase Order, the latter will prevail.

### 2. Definitions

- 2.1. "**Affiliates**" means any entity, which controls, is controlled by, or is under common control with a Party. For purposes of this definition, control means in relation to a company or other entity, without limitation: the direct or indirect beneficial ownership of the majority in number, of the issued equity shares (or other equity interest) in the company or entity concerned; the right, through shareholding or otherwise, directly or indirectly to control the composition of the board of directors (or other controlling body) of the company or entity concerned and, without prejudice to the generality of the foregoing, the composition of such board (or other controlling body) shall be deemed to be so controlled if the person or entity holding the right may by the exercise of some power, directly or indirectly, appoint or remove the majority of the directors (or members of such other controlling body); or the right, directly or indirectly, to control the management of the company or entity concerned.
- 2.2. "**Agreement**" means the terms and conditions contained in the Confirmed Purchase Order and these General Conditions.
- 2.3. "**CIP**" means Carriage and Insurance Paid in accordance with Incoterms 2010.
- 2.4. "**Confirmed Purchase Order**" means Supplier's written confirmation of Purchaser's order.
- 2.5. "**End Product**" means the finished drug product manufactured by or for Purchaser (and/or its Affiliates) with the Product delivered by Supplier.
- 2.6. "**Force Majeure**" means any circumstances beyond the reasonable control of the affected party which directly prevents or has a material adverse effect on that party's performance of the Agreement (including without limitation acts of the public enemy, insurrections, riots, embargoes, labour disputes, including strikes, lockouts, job actions, or boycotts, loss of rights to manufacture or supply, equipment failure, production failure, fires, explosions, floods, frost damages, shortages of material or energy).
- 2.7. "**General Conditions**" means these General Conditions of Sales.
- 2.8. "**MSDS**" means, as may be applicable, the Master Safety Data Sheet issued by Supplier relevant to the storage and handling of the Product.
- 2.9. "**Parties**" means Supplier and Purchaser, jointly, and "Party" shall mean either one of them, as the context requires.
- 2.10. "**Price**" means the price of the Product as quoted in Supplier's offer or Confirmed Purchase Order and as further determined in accordance with clause 4.
- 2.11. "**Product**" or "**Products**" means active pharmaceutical ingredients ("**API**") or intermediate products conforming to the Specifications set forth in Supplier's offer or confirmation.
- 2.12. "**Purchaser**" means any party that purchases Product from Supplier.
- 2.13. "**Specifications**" means the specifications for the Product identified in Supplier's offer or Confirmed Purchase Order as may be amended by Supplier upon reasonable prior notice.
- 2.14. "**Supplier**" means Aspen Oss B.V.

### 3. Delivery; risk of loss and damage; retention of title

- 3.1. Absent manifest error, measurements and weights as mentioned in Supplier's delivery documents determine the quantity of the Product delivered.
- 3.2. Unless expressly agreed otherwise, delivery of the Product shall be made CIP.
- 3.3. The risk of loss and damage to the Product shall pass to Purchaser upon delivery. Purchaser shall store and handle the Product

delivered in accordance with the MSDS relevant to the Product.

- 3.4. Title to the Product shall remain vested in Supplier and Purchaser shall hold the Product in trust for Supplier until the Price for the Product has been paid in full. If Purchaser fails to pay the Price in accordance with the payment term, Supplier shall have the right to repossess the Product, without any prior notice being required and without prejudice to any other rights Supplier may have. This clause 3.4 does not preclude Purchaser from using the Product in the normal course of its business.
- 3.5. In the event Purchaser fails to take delivery of Confirmed Purchase Orders and in addition to any other remedy available to Supplier, Supplier shall be entitled to (at Supplier's option):
  - 3.5.1. invoice the Products and charge a storage fee of 2% (two per cent) per month on the invoiced amount until Purchaser takes delivery; or
  - 3.5.2. charge a monthly reservation fee of 2% (two per cent) of the Price of the Product which Purchaser has not taken delivery.
- 3.6. The amounts shall be calculated on the duration of Purchaser's failure to take delivery on the basis of the actual number of days (360 per year), be compounded monthly and shall be payable by Purchaser in accordance with clause 4 of these General Conditions.

#### **4. Price & payment terms**

- 4.1. Unless expressly agreed otherwise, Prices quoted by Supplier for the Product include packing costs and the cost of delivery CIP and exclude VAT and any other taxes, charges or costs.
- 4.2. In the event of any changes in duties, taxes, freight, intermediate storage and/or insurance charges occurring after the formation of the Agreement but prior to the agreed delivery of the Product, Supplier has the right to adjust the Price to the extent it has been based on one or more of these factors.
- 4.3. In the event of any increases in prices of raw materials or other materials necessary for the manufacture of the Product to be delivered to Purchaser occurring after the formation of the Agreement but prior to the agreed delivery, Supplier has the right to increase the Price to the extent it has been based on one or more of these factors, provided that Supplier shall give fourteen days prior written notice of each such increase and that Purchaser shall have the right to cancel the Agreement within seven days of receipt of each such notice.
- 4.4. Unless expressly agreed otherwise the Price shall be paid to the bank account designated by Supplier no later than thirty (30) days from the date of invoice. Payment shall be made net without deduction, demand, retention or set-off.
- 4.5. If Purchaser fails to pay any amount when due, then, without prejudice to any other rights Supplier may have:
  - 4.5.1. all other debts Purchaser owes Supplier shall become immediately due for payment;
  - 4.5.2. default interest shall be due on the amount outstanding at the 3 (three) month London Interbank Offered Rate (LIBOR) plus 4% (four percent) per annum from the due date till the date of payment;
  - 4.5.3. all costs, including judicial, made in order to obtain payment by Purchaser of the amount(s) due, shall be for account of Purchaser; and
  - 4.5.4. Supplier shall be entitled to demand adequate security to cover arrears, to demand prepayment of further deliveries, or to suspend further deliveries until all amounts due have been paid in full.
- 4.6. In the event Supplier has reasonable concerns whether Purchaser will effect payment for future deliveries of the Product in a timely manner, Supplier shall have the rights mentioned under clause 4.5.4.
- 4.7. Under no circumstances shall Purchaser be entitled to retain or set-off payments due to Supplier.

#### **5. Warranty & Liability**

- 5.1. Supplier warrants and represents to Purchaser that:
  - 5.1.1. unless agreed otherwise, the Product delivered by Supplier to Purchaser shall be in conformity with the Specifications; and
  - 5.1.2. subject to clause 3.4, Supplier shall give good title to the Product delivered to Purchaser.
- 5.2. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO OTHER WARRANTIES OR REPRESENTATIONS, OF WHATEVER NATURE, EXPRESSED OR IMPLIED (WITH RESPECT TO THIRD PARTY INTELLECTUAL PROPERTY OR OTHERWISE), ARE GIVEN OR SHALL BE DEEMED TO HAVE BEEN GIVEN BY SUPPLIER REGARDING PRODUCT MANUFACTURED AND SUPPLIED HEREUNDER.
- 5.3. Purchaser shall indemnify, defend and hold Supplier and its Affiliates and its and their officers, directors, agents, and employees harmless against all third party claims, suits, actions, proceedings, losses, damages and liabilities, costs and expenses, including reasonable legal expenses, arising out of or relating to: any product liability claims related to any Purchaser End Product(s); and its failure to comply with the applicable laws in relation to its performance under the Agreement and/or its use of the Products.
- 5.4. Supplier's maximum liability for damages in connection with any claim related to the Agreement, regardless of the cause of action, will not exceed the Price of the Product delivered under the Confirmed Purchase Order.
- 5.5. IN NO EVENT SHALL SUPPLIER BE LIABLE UNDER THE AGREEMENT, CONFIRMED PURCHASE ORDER, GENERAL CONDITIONS OR UNDER ANY CAUSE OF ACTION RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, THE MANUFACTURE OR SALE OF PRODUCT OR THE MANUFACTURE OR SALE OF END PRODUCT, WHETHER IN CONTRACT,

WARRANTY, TORT INCLUDING NEGLIGENCE, STRICT LIABILITY, PROFESSIONAL LIABILITY, PRODUCT LIABILITY, CONTRIBUTION, OR ANY OTHER CAUSE OF ACTION FOR SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, INCLUDING LOSS OF PROFIT, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF REVENUES, OR LOSS OF GOODWILL. NOTWITHSTANDING THE AFORESAID, NOTHING IN THESE GENERAL CONDITIONS SHALL OPERATE TO EXCLUDE OR RESTRICT EITHER PARTY'S LIABILITY WHICH CANNOT BE EXCLUDED OR RESTRICTED ACCORDING TO APPLICABLE LAW.

## **6. Non-conformity**

- 6.1. Samples of the production batch of the Product shall be taken at random and sealed by Supplier and shall be stored for reference for a period of 24 (twenty-four) months.
- 6.2. Purchaser shall, within 30 (thirty) days of receipt of the Product, examine the Product to check conformity with the Specifications. The Product shall be deemed to be accepted if Supplier has not received written notice from Purchaser to the contrary within 30 (thirty) days after Delivery of the Product or if Purchaser utilizes the Product in the manufacture of the Purchaser End Product.
- 6.3. If Purchaser is of the opinion that any batch of the Product does not conform to the Specifications based on Purchaser's analysis performed on the relevant batch(es) of Product, Purchaser shall promptly (and in no event later than 30 (thirty) days after delivery) notify Supplier. Absent manifest errors, the sealed sample of the relevant batch(es) stored by Supplier in accordance with clause 6.1 shall be conclusive evidence whether the relevant batch(es) conform to the Specifications. In the event the relevant batch(es) do not conform to Specifications, Supplier's liability and Purchaser's sole remedy shall at Supplier's option and cost be limited to: either (i) replace such batches free of charge as soon as reasonably possible, or (ii) issue a credit note on the basis of the Price paid for such non-conforming Product. THE LIABILITY RECORDED IN THIS PARAGRAPH 6.3 SHALL BE THE SOLE AND EXCLUSIVE LIABILITY OF SUPPLIER IN RELATION TO DEFECTIVE PRODUCT. WHERE THE PRODUCT IS DEFECTIVE DUE TO THE FAULT OF SUPPLIER, SUCH PRODUCT SHALL BE RETURNED TO SUPPLIER FOR REPROCESS OR DESTRUCTION, THE DECISION OF WHICH SHALL BE AT THE SOLE DISCRETION OF SUPPLIER. SUPPLIER SHALL BEAR THE COSTS ASSOCIATED WITH THE RETURN FREIGHT OF SUCH DEFECTIVE PRODUCT.
- 6.4. In the event of there being a dispute as to whether the Product is defective, then the Parties shall use their best endeavors to resolve that dispute and if they fail to do so within 30 (thirty) days of Supplier being notified by Purchaser, in writing, of the allegedly defective Product, the dispute shall be resolved by an independent laboratory appointed by the Parties. The independent laboratory shall act as an expert and not as an arbitrator. The fees of the independent laboratory shall be borne by the Party against whom the independent laboratory's decision is given.

## **7. Cancellation of purchase orders**

- 7.1. A Confirmed Purchase Order may be cancelled by Supplier by written notice:
  - 7.1.1. if the Purchaser is in breach or default of any of the provisions of the Confirmed Purchase Order and does not rectify such breach or default within one (1) month after receipt of a notice from the other party requesting rectification of such breach or default; or
  - 7.1.2. forthwith by Supplier in the event Purchaser assigns the Agreement in whole or in part to any third party contrary to clause 9.
- 7.2. A Confirmed Purchase order may be cancelled by either Party by written notice, forthwith, in the event of the other party's liquidation, bankruptcy or state of insolvency.
- 7.3. Cancellation of a Confirmed Purchase order shall not release either party hereto from any liability or right of action which at the time of cancellation has already accrued to either party or which may thereafter accrue in respect of any act or omission prior to such termination. Such rights shall include but not be limited to the recovery of payments due to Supplier.

## **8. Force Majeure**

- 8.1. The occurrence of an event of Force Majeure that prevents a party from performing under an Agreement shall automatically excuse such party from performing its obligations affected (other than the obligation to pay moneys due) under the Agreement so long as such Force Majeure event continues to prevent or impair such party's performance. In such event, the non-performing party shall not be deemed to be in breach of the Agreement, provided, however, the party so affected shall give prompt notice to the other party of such cause and shall take whatever reasonable steps it deems necessary to relieve the effect of such cause as soon as possible.
- 8.2. If a Force Majeure event prevents a party from performing under an Agreement for more than ninety (90) days and unless parties have agreed in writing on measures to counter the effects of Force Majeure, then either party may terminate the Agreement by thirty (30) days written notice to the party.

## **9. Assignment**

No rights or obligations of Purchaser are assignable without the prior written consent of Supplier, which consent shall not be unreasonably withheld or delayed. Supplier shall have the right to assign, transfer, encumber, create an interest in or otherwise dispose of any rights or interests under these General Conditions.

## **10. Insurance**

Each Party agrees to obtain and maintain commercial general and product liability insurance, with a reputable and financially secure insurance carrier, in such amounts and subject to such deductibles as is reasonable and customary in its industry and for its size and activities. Upon reasonable request by a Party, the other Party shall produce evidence, in the form of a certificate of insurance, that such insurance policies are valid, kept up to date and in full force and effect and shall supply a copy of such certificate of insurance to the requesting Party.

**11. Data privacy**

Purchaser acknowledges and consents to the collection, processing and onward transfer of its' personal data by Supplier and its Affiliates (wherever located, including in the USA) as it relates to Purchaser's relationship with Supplier and agrees that Supplier may identify Purchaser as a customer in communications to Supplier's Affiliates or to third parties wherever located.

**12. Applicable law; Disputes**

- 12.1. The Agreement shall be construed and enforced in accordance with the laws of the Netherlands and the Parties submit to the non-exclusive jurisdiction of the courts of Oost-Brabant, The Netherlands. The provisions of the Vienna Sales Convention dated 11 April 1980 do not apply.
- 12.2. Supplier and Purchaser shall attempt in good faith to resolve promptly any dispute arising out of or relating to the Agreement by negotiation. If the matter cannot be amicably resolved, Supplier and Purchaser shall endeavor to settle the dispute by mediation, or by arbitration, by an independent body or person nominated by the parties. Failing the resolution of such dispute or if parties fail to reach agreement to submit to either mediation or arbitration, either party may submit the dispute to the competent courts.
- 12.3. This clause 12 shall not be construed to limit or to preclude either party from bringing any action in any court of competent jurisdiction for (i) collection of moneys due and payable, and (ii) injunctive or other provisional relief as such party may deem necessary or appropriate.

**END**