

BETATERMS AND CONDITIONS OF TRADE

between

BETA HEALTHCARE INTERNATIONAL LIMITED

company registration number 947

("Beta")

and

The person or entity purchasing the Products from Beta

("Customer")

(collectively "the Parties" and individually "a Party")

1. DEFINITIONS

In these terms and conditions:

- 1.1. "Beta" means Beta Healthcare International Limited, Reg. No. 947, a company duly incorporated in accordance with the laws of Kenya.
- 1.2. "Customer" means the applicant on the Application for Trading Facility to which these Terms and Conditions of Trade ("Terms") apply or any legal entity or person who places an Order/offer with Beta directly, for the purchase of Products and whose Order/offer is accepted by Beta, as the case may be, in writing or telephonically or electronically, or any legal entity or person who validly accepts a quotation/offer submitted by Beta to such entity or person:
- 1.3. "Delivery" means delivery to the Customer as mentioned in clause 6 below.
- 1.4. "Distributors" means distributors, as appointed by Beta, of Products throughout the Territory which also include the Beta warehouses. Products will be distributed by the relevant Distributors at Beta's sole discretion and Beta reserves the right to split Orders in its sole discretion in the quantities and on the dates it decides.
- 1.5. "Orders" means an agreement entered into between Beta and the Customer on acceptance of an order placed by the Customer on Beta.
- 1.6. "Products" means the products manufactured, supplied, marketed, promoted, distributed or sold in the Territory by Beta and which appear on Beta's list of products as may be amended by Beta by notice to the Customer in writing in its absolute discretion from time to time.
- 1.7. "Territory" means the Republic of Kenya and/or Tanzania.

2. BACKGROUND, SCOPE AND PURPOSE OF THIS DOCUMENT

- 2.1. Beta conducts business as a manufacturer and distributor of generic medicines and pharmaceutical products.
- 2.2. As an approved or potential Customer of Beta, the Customer will purchase Products from Beta from time to time.
- 2.3. The nature, quantity and specifications of the Products shall be agreed upon between Beta and the Customer in writing from time to time.
- 2.4. These Terms shall govern the sale of Products by Beta to the Customer and shall take precedence over any other conditions/terms which may be contained in the Customer's documentation.

3. COMPLIANCE & INTERPRETATION

- 3.1. Beta will only supply Products to those Customers who are eligible under and comply with the Pharmacy and Poisons Act.
- 3.2. Customer agrees that all Products supplied by Beta are subject to these Terms and such other conditions

which may appear on the Tax or Commercial invoice and/or waybill. No variation or alteration of these Terms shall be effective unless reduced to writing and signed by a duly authorised director or manager of Beta. No indulgence granted by Beta shall be considered a waiver of Beta's rights hereunder.

- 3.3. The Products are supplied on condition that they are for sale and consumption only within the Territory as per clause 1.7. Accordingly, the Customer shall not sell any of the Products to any person or entity outside the Territory, or to any person or entity who intends to sell the Products out of the Territory, or if it would be reasonable to assume that they would resell the Products outside the Territory.
- 3.4. Should the Customer intend to export the Products out of the Territory, the Customer will ensure that the Products to be exported are registered in the relevant country/ies of export. The Customer hereby indemnifies and holds Beta harmless against any losses, damages and liability should the Products not be registered in the particular country/ies of export.
- 3.5. The Customer warrants that it will always comply with regulatory requirements applicable to the Products in the Territory. The Customer hereby indemnifies and holds Beta harmless against any losses, damages and liability should the Customer fail to comply with regulatory requirements applicable to the Products in the Territory.

4. PRICE STRUCTURE

- 4.1. Products will be sold at prices as recorded in Beta's product price list in force at the date of delivery.
- 4.2. Prices are subject to change without notice.
- 4.3. The prices quoted for the Products are inclusive of packaging and delivery within the borders of the Territory.

5. ORDERS

- 5.1. Any Order received from the Customer will be binding on the Customer, notwithstanding the fact that such Order may have been given or signed by a person not authorized to do so.
- 5.2. Products, which are out of stock, may be placed on back order. Such Products will be delivered as soon as stocks are available. Beta reserves the rights, in its absolute discretion, to cancel back orders.
- 5.3. The Order constitutes an offer by the Customer to purchase the Products in accordance with these Terms. The Customer is responsible for ensuring that the terms of the Order and any applicable specifications submitted by the Customer are complete and accurate.
- 5.4. These Terms and Conditions constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Beta which is not set out in these Terms.

6. DELIVERY

- 6.1. All distribution for Beta will be done through the Distributors, in accordance with the terms and conditions of a separate distribution agreement as entered into between the Distributor and Beta.
 - 6.2. All risk in and to any Product supplied by Beta shall pass to the Customer upon delivery. Delivery shall be deemed to have taken place when the Products are delivered to the address nominated by the Customer. The Customer warrants that the signatory to any delivery note or any other documentation made out in the name of the Customer shall constitute prima facie proof of the proper delivery of the Products to the Customer.
 - 6.3. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Beta shall not be liable for any delay in delivery of the Products that is caused by a force majeure event or the Customer's failure to provide Beta with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
 - 6.4. The Customer shall not have a claim of any nature whatsoever against Beta either by reason of any delay in giving delivery of the Products on any date or dates that may be specified in the Customer's Order, or agreed to elsewhere, or within a reasonable time in the case in which no date is specified or agreed.
 - 6.5. The obligation to deliver shall in all cases be subject to Beta having the Products available. Orders for Products that are out of stock shall, unless cancelled under **clause 6.6** below, be placed on back order for delivery as soon as stocks are available.
 - 6.6. In the event of Beta being unable to deliver the Products for any reason whatsoever, Beta may, in its discretion, cancel the Order or any part thereof, and the Customer shall have no claim against Beta for any damages, losses or claims of whatsoever nature arising out of non-delivery or part delivery of the Products.
 - 6.7. Beta may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Order. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- ## 7. CLAIMS AND RETURNS POLICY
- 7.1. All Products are sold on a non-returnable basis, subject to the provisions of **clause 6.2** to **7.7** (inclusive).
 - 7.2. Beta cannot and does not accept responsibility for any deterioration which may occur because of failure to follow storage instructions precisely.
 - 7.3. Invoices shall be deemed to be correct unless the Customer queries the same in writing within 10 (ten) days of receipt of the relevant documentation.
 - 7.4. Original invoice numbers must be quoted when submitting a claim. Beta will target to resolve any claims within a period of less than 90 (ninety) days. Customer must have back-up documentation readily available for this period so as to facilitate the provision of all relevant documents, such as invoices, debit and credit notes as well as Delivery notices.
 - 7.5. All claims or requests for returns must have prior approval by Beta before such a claim can be processed or Product returned. The cost of returning Products to Customer where proper prior approval has not been obtained will be for the account of Customer.
 - 7.6. Products supplied in error are returnable, and Beta will arrange for collection thereof, if reported to Beta in writing within 48 (forty eight) hours of Delivery; and the incorrect Products to be collected are in the same order and condition as on Delivery to the Customer and the Customer has complied with the correct storage specifications for these Products while awaiting collection.

- 7.7. Short delivered stock must be reported to Beta within 48 (forty eight) hours. Upon receipt of the claim from Customer, Beta will investigate the matter and will endeavour to report back to Customer within 5 (five) working days. Should Beta determine the claim to be valid, Beta will proceed to credit the Customer's Trading Facility. Should the Products be damaged upon Delivery to the Customer, Beta will arrange to credit the Customer's Trading Facility if the damaged Products are reported to Beta in writing within 48 (forty eight) hours of Delivery. Beta will collect or destroy the damaged Products.
- 7.8. Products Delivered with an expiry date of less than 3 (three) months from the date of Delivery will be credited or replaced if they are returned or reported within 48 (forty eight) hours of Delivery of such Products.
- 7.9. Beta regulatory policies and procedures will be followed in the event of a Product recall by Beta and the Customer shall comply with the administrative procedures prescribed by Beta from time to time for the implementation of this **clause 7.9**.

8. PAYMENT TERMS

- 8.1. Beta may invoice the Customer on or any time after the completion of the delivery.
- 8.2. The payment terms are strictly 30 (thirty) days from date of statement.
- 8.3. No discounts or allowances may be deducted from the net amount.
- 8.4. Interest at the prime rate of interest per annum charged by the Central Bank of Kenya or its successor-in-title, will be charged on all overdue amounts up to the maximum permissible rate determined in terms of any applicable regulations and/or legislation.
- 8.5. A certificate by any director, general manager or manager for the time being of Beta, whose capacity or authority it will not be necessary to prove, showing the nature and amount of any indebtedness due, owing and payable by the Customer to Beta at any time, shall be sufficient prima facie proof of the facts stated in such certificate for the purposes of all legal proceedings against the Customer for the recovery of the said amount.
- 8.6. Payment is to be made to Beta or its nominee, as advised by Beta from time to time, and shall be made in the currency as per the Tax and/or Commercial invoice free of deduction, set off and any other charges. Payment by the Customer shall not be delayed or withheld for any reason whatsoever, including any alleged default on the part of Beta. Time of payment is of the essence.
- 8.7. Beta 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 Beta to the Customer.
- 8.8. Unless the Customer objects in writing to the balance outstanding which appears on any monthly statement of Beta within 15 (fifteen) days from the date of statement, the balance outstanding which appears on the statement shall be prima facie proof of the amount due and owing and it shall rest with the Customer to prove that such amount is not due and owing to Beta.
- 8.9. Beta may terminate Customer's Trading Facility or cease performance of any of its obligations to the Customer until all amounts have been paid and Beta shall not be liable for any loss or damage that may be suffered by the Customer as a result thereof.
- 8.10. The Customer's Trading Facility will also be terminated in the event that:
 - 8.10.1. an order is made by any court of competent jurisdiction, whether provisional or final, for the winding up or the judicial management of the Customer; or

- 8.10.2. the Customer passes a resolution for its voluntary winding up.
- 8.11. In the event of the Customer's Trading Facility being terminated, as set out in **clauses 8.10.1 and 8.10.2** above, Customer will have to re-apply for a Trading Facility if Customer wishes to purchase from Beta again.

9. **QUALITY**

- 9.1. Beta warrants that on Delivery the Products shall:
- 9.1.1. conform with their description and any applicable Specification;
- 9.1.2. be of satisfactory quality;
- 9.2. Subject to **clause 7.2 and 10.1**, if:
- 9.2.1. the Customer gives notice in writing to Beta within 48 (forty eight) hours of delivery that some or all of the Products do not comply with **clause 9.1**; and
- 9.2.2. Beta is given a reasonable opportunity of examining such Products; and
- 9.2.3. the Customer (if asked to do so) returns such Products to Beta's nominated address; then Beta shall, at its option, replace the Products, or refund the price of the Products.
- 9.3. Beta shall not be liable for the Products' failure to comply with **clause 9.1** in any of the following events:
- 9.3.1. the Customer makes any further use of such Products after giving notice in accordance with **clause 9.2**;
- 9.3.2. the defect arises because the Customer failed to follow Beta's oral or written instructions as to the storage of the Products;
- 9.3.3. if Beta determines that the defect had arisen as a result of the Customer's manner of storage;
- 9.3.4. if the Customer either transported or was responsible for the transportation of the Products from any of Beta's premises to the place of delivery.
- 9.4. Except as provided in this **clause 9**, Beta shall have no liability to the Customer.

10. **LIMITATION OF LIABILITY**

- 10.1. The Customer undertakes to ensure that, in respect of all Products, all instructions with regard to safety precautions, handling and storage information and environmental data, are strictly adhered to and such information is passed on to its Customers and to determine the suitability of the Products for the intended use.
- 10.2. This **clause 10** shall survive termination of these Terms.
- 10.3. Beta shall under no circumstances whatsoever be liable to the Customer, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the sale of Products; and
- 10.4. Beta's total liability to the Customer in respect of all other losses arising under or in connection with the sale of Products, whether in contract, delict (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the invoice giving rise to such liability.

11. **BREACH**

Should the Customer breach any provision of these Terms, Beta shall be entitled, without prejudice to any other rights that it may have, whether under these terms and conditions or in law, to cancel these Terms or any Order immediately on written notice or to claim immediate specific performance of all the defaulting party's obligations, whether or not due for performance, in such event without prejudice to Beta's right to claim damages from the Customer.

12. **FORCE MAJEURE**

Beta shall not be liable for damages for any delay or failure to carry out any obligations to the Customer

out of any cause in whole or in part beyond Beta's control and without derogating from the generality of the foregoing, arising out of any delay or failure due to civil or political unrest or action, rebellion, strikes, lock-outs or other industrial dispute, war, embargoes, sanctions, breakdown of machinery, transport and shipping difficulties, inability to secure labour and materials, fire, flood, rain or storm or any act of any Government or legislation or default of suppliers, sub-contractors or third party service providers.

13. **NOTICES AND DOMICILIUM**

- 13.1. The parties choose as their respective domicilium citandi et executandi and as the address at which service of legal documents can be effected, their principal place of business address, as recorded on the Application for Trading Facility, or in the absence of an Application for Trading Facility the address indicated on the Delivery note.
- 13.2. The Customer undertakes to inform Beta in writing, within 7 (seven) days of any change of director, member, shareholder or of any change of address or of its intention to sell or alienate its business.

14. **COSTS**

The Customer shall be liable for and shall pay all legal costs, on attorney and own client scale, including but not limited to counsel's fees, collection commission and tracing fees incurred by Beta as a result of a breach of any of the provisions of these Terms.

15. **ACCEPTANCE CONDITIONS**

- 15.1. These Terms shall be governed by, construed and take effect in all respects in accordance with the laws of Kenya.
- 15.2. No relaxation or indulgence granted by Beta and no omission by Beta timeously or diligently to enforce any right under these Terms should be deemed to amount to a waiver of that or any other right for the future.
- 15.3. The Customer acknowledges that it shall be entirely within the discretion of Beta at any time and without having to give any reasons to withdraw the Trading Facility that may be granted as a result of the application.
- 15.4. The provisions of these Terms are severable and in the event that any one or more of the conditions or terms hereof are illegal, the remaining provisions and terms shall be valid and enforceable.
- 15.5. Should there be a valid agreement in place between Beta and the Customer regulating the matters contemplated herein and the Parties are conducting their business in terms of that agreement, these Terms will supplement that agreement in so far as there are no conflicts and in case of a conflict, such other agreement will take precedence over these Terms. These Terms shall take precedence over any terms and conditions of the Customer, whether such terms and conditions are included in Customer's documentation or by reference.

16. **OWNERSHIP OF PRODUCT**

- 16.1. Ownership to the Products shall not pass to the Customer until Beta has received payment in full (in cash or cleared funds) for:
- 16.1.1. the Products; and
- 16.1.2. any other Products that Beta has supplied to the Customer in respect of which payment has become due.
- 16.2. Until ownership to the Products has passed to the Customer, the Customer shall:
- 16.2.1. hold the Products on a fiduciary basis;
- 16.2.2. store the Products held by the Customer so that they remain readily identifiable as Beta's property;
- 16.2.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;

- 16.2.4. maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 16.2.5. give Beta such information relating to the Products as Beta may require from time to time,
- 16.2.6. but the Customer may resell or use the Products in the ordinary course of its business.
- 16.3. The Customer undertakes to inform the landlord of the premises at which any of the Products are stored or located, that Beta owns such Products and the Customer shall, against request, furnish written proof of such notification. Notwithstanding the aforesaid, Beta shall be entitled to notify the landlord of the premises at which any of the Products are stored or located, should it deem it necessary to do so.
- 16.4. If before title to the Products passes to the Customer the Customer becomes subject to any of the events listed in **clause 8.10** or Beta reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Beta may have, Beta may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.
17. **DECLARATION**
- 17.1. I/We, the undersigned, in my/our capacity as an authorised representative of the Customer hereby accept and agree to these Terms.
- 17.2. I/We here by confirm that these Terms are fair, reasonable and just and I/We confirm that our attention has been drawn to all provisions which imposes liabilities and obligations.

Customer Name:

Signature:

Name:

Designation:

(who by his / her signature hereto warrants his / her authority)

Date:

Place:
