

JANSSEN-CILAG PTY LIMITED (JCA)
STANDARD TERMS AND CONDITIONS OF SALE FOR AUSTRALIA AND NEW ZEALAND

1 ENTIRE AGREEMENT

- 1.1 Subject to any variation under clause 24.4:
- (a) the Contract will be on these Standard Terms to the exclusion of all other terms and conditions (including, without limitation, any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document); and
 - (b) no terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract.
- 1.2 JCA posts its Standard Terms on its Website. JCA may revise these Standard Terms at any time and post the revised Standard Terms on its Website. The Customer is responsible for checking the Website for any revised Standard Terms before each Order, and the revised Standard Terms will be immediately effective upon posting on the Website for all Orders made after such posting. JCA will include an 'Effective Date' on the Standard Terms to indicate the date the Standard Terms were last revised and posted on the Website.

2 ORDERS

- 2.1 Orders for Products are to be placed by the Customer in accordance with Annexure A.
- 2.2 Each order for Products made by the Customer to JCA shall be deemed to be an offer by the Customer to purchase Products subject to these Standard Terms until it is accepted by JCA.
- 2.3 JCA may cancel the acceptance of any Order for Products at any time before delivery. The Customer may only cancel an Order for Products with JCA's prior written consent.
- 2.4 JCA may discontinue supply of any Product without notice, unless otherwise required by law.
- 2.5 By making an Order, the Customer acknowledges that it has read, understood, and agreed to be bound by the terms and conditions set forth in these Standard Terms.
- 2.6 When an Order is recorded in JCA's order processing system and JCA has generated an order number or track number on its system, a contract will be formed between the parties. A separate Contract is formed in relation to each Order.
- 2.7 The Customer can obtain the relevant order number or track number associated with an Order by requesting it from JCA customer services.
- 2.8 To ensure safe handling and minimise breakages in transit some items are only supplied in "minimum order" packaging. Orders for less than the "minimum order" quantity will be rounded to the nearest "minimum order"

quantity, and the Customer will be required to pay for all Products supplied, with such amount being the "Products" under the Contract.

- 2.9 JCA may withhold delivery of Products (whether or not an Order has been accepted) for non-payment of any amounts due and payable or a breach of these Standard Terms by the Customer.

3 CANCELLATION

JCA will advise the Customer if it will be unable to deliver the Products and, upon receipt of the notice by the Customer, the Contract for that Order (and that Order only), will be terminated without incurring any liability.

4 PRICES

- 4.1 Unless otherwise agreed in writing, Products will be invoiced in accordance with JCA's prevailing price lists on JCA's ordering processing system applicable at the time that JCA generates the relevant order number or track number on its system.
- 4.2 Prices are subject to change without notice.
- 4.3 GST:
- (a) All prices quoted or listed are exclusive of GST unless expressly indicated to the contrary.
 - (b) Where a payment or consideration for the Products is not expressed to include GST, the Customer must pay, in addition to the payment or consideration expressed and without deduction or set off, an amount in respect of GST applicable to the supply by JCA to the Customer.
 - (c) Payment of GST must be made at the same time as payment is due on the invoice for the Products.
 - (d) JCA must issue the Customer with a correctly rendered tax invoice for any amount collected on account of GST.
 - (i) For Australia: In this clause, words and expressions which have a defined meaning in the A New Tax System (Goods and Services Tax) Act 1999 (GST Act) have the same meaning as in the GST Act.
 - (ii) For New Zealand: In this clause, words and expressions which have a defined meaning in the Goods and Services Tax Act 1985 (GST Act) have the same meaning as in the GST Act.

5 PAYMENT

- 5.1 Products will be invoiced on dispatch or at any later time determined by JCA.
- 5.2 For AU: Payment is to be made to JCA by the Customer on the 30th day of the month

following the invoice or in the case of February, on the last day of the month.

For NZ: Payment is to be made to JCA by the Customer on the 20th day of the month following the invoice.

- 5.3 Payment must be made to JCA without set-off or deduction of any kind.
- 5.4 All payments payable to JCA under the Contract shall become due immediately upon termination of the Contract despite any other provision.
- 5.5 If the Customer fails to pay an amount on the due date, all amounts then owing to JCA immediately and automatically will become due and payable. The Customer will pay JCA interest on all overdue amounts calculated daily from the due date for payment at the rate which is:
 - (a) For orders in Australia, 4% above the Reserve Bank of Australia's Interbank Overnight Cash Rate; and
 - (b) For orders in New Zealand, 4% above the Reserve Bank of New Zealand's Official Cash Rate.

6 DELIVERY TERMS AND CHARGES

- 6.1 Delivery occurs when possession or control of the Products passes to the Customer, its agent or carrier, at the Customer's premises or any other location agreed between the Customer and JCA.
- 6.2 A receipt for the Products signed on behalf of the Customer will be conclusive evidence of delivery.
- 6.3 JCA will make reasonable efforts to deliver Products on a specific date requested by the Customer or, if any of those dates fall on a weekend or public holiday, the first working day after that date. However, the parties agree that time is not of the essence in respect of Delivery and JCA will not be liable to the Customer for failure to deliver on any specific date. JCA may make partial deliveries or deliveries by instalments in any amount it may determine and each such partial delivery or delivery by instalments shall be deemed to be a separate Contract and these Standard Terms shall apply to each partial delivery or delivery by instalments as if such partial amount comprised the "Products" under the Contract.
- 6.4 The Customer must notify JCA within 7 days of delivery of any short fall in or loss or damage to Products delivered. After 7 days it will be deemed to have accepted the Products and cannot return the Products in accordance with clause 8.
- 6.5 All Orders in excess of \$250 (in AUD or NZD as relevant) will be free into store throughout Australia or New Zealand, as applicable. Orders of \$250 or less will incur a \$25 handling and administration fee.

6.6 Where an Order has more than one scheduled delivery, each separate delivery will incur a handling and administration fee. For the avoidance of doubt, JCA will not charge a separate delivery fee if JCA elects to make partial delivery, or delivery by instalments under clause 6.3

6.7 If the Customer requests express freight of Products or any non-standard form of delivery, the Customer will be responsible for the freight/delivery costs and such costs will be added to the invoiced costs and be payable at the same time. JCA will notify the Customer in advance of such freight/delivery costs. If the Customer does not accept such costs, delivery of Products will be by standard form of delivery.

7 RISK/TITLE

- 7.1 Risk of damage to or loss of the Products shall pass to the Customer at the time when the Products are delivered to the Customer.
- 7.2 Title in the Products passes to the Customer when JCA has received (in cash or cleared funds) the price for the Products in full together with any additional charges as set out in the relevant invoice and any interest due.

8 RECOVERY OF GOODS

- 8.1 Until title of the Products has passed to the Customer, the Customer must:
 - (a) hold the Products on behalf of JCA;
 - (b) store the Products (at no cost to JCA) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as JCA's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
 - (d) maintain the Products in satisfactory condition insured on JCA's behalf for their full price against all risks to the reasonable satisfaction of JCA. On request the Customer shall produce the policy of insurance to JCA.
- 8.2 Where payment is overdue in whole or in part for any of the Products, JCA or its nominee may (without prejudice to any of its other rights) recover and / or resell the Products and may enter the Customer's premises or any other place where the Products are stored by the Customer for that purpose without being liable for any loss or damage caused.
- 8.3 The Customer grants to JCA an irrevocable license and authority to enter the Customer's premises to recover the Products, provided that JCA may only recover and resell for its own account sufficient of the Products to satisfy all the Customer's unpaid liabilities in respect of the Products and cost of resale.

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- 8.4 The Customer may resell the Products before title has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Customer's business at arm's length; and
 - (b) any such sale shall be a sale of JCA's property on the Customer's own behalf and the Customer shall hold the proceeds on account for JCA.

9 PPSA

- 9.1 If JCA determines that the Contract is or contains a security interest for the purposes of the PPSA, the Customer agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which JCA asks and considers necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective; or
 - (b) enabling JCA to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by JCA; or
 - (c) enabling JCA to exercise rights in connection with the security interest.

10 RETURNS; DAMAGED PRODUCTS

- 10.1 JCA will, in its sole discretion, replace damaged stock as soon as reasonably practicable or issue the Customer with a credit.
- 10.2 The Customer is responsible for all costs of delivery applicable to the return of the Products to JCA, unless JCA agrees that the Products are damaged.
- 10.3 In the event the Customer returns non-damaged Products, JCA reserves the right to charge a restocking fee on Products returned, at a rate of 15% of invoiced cost.
- 10.4 Subject to clause 10.6, JCA is under no obligation to accept return of or provide refund or credit for any non-damaged Products or Products supplied in accordance with these Standard Terms and JCA will not replace, refund or provide credit for short dated or expired goods.
- 10.5 In circumstances where JCA does accept return of Products for any reason and JCA has not been notified of a request to return within 7 days of delivery, the Customer is required to sign and return a standard customer declaration to confirm that the Products being returned have been appropriately stored and the chain of custody has been maintained. JCA will provide this form as required.

- 10.6 Nothing in this clause 10 has the effect of limiting any rights of the Customer which cannot be excluded or limited at law, including under the Australian Consumer Law.

11 STORAGE, HANDLING AND USE OF PRODUCTS

- 11.1 It is the Customer's responsibility:
- (a) to ensure that all applicable health and safety regulations and therapeutic goods requirements are observed and other appropriate steps taken in relation to the storage, handling, sale and the use of the Products once they are delivered to the Customer; and
 - (b) where information is supplied to the Customer on potential hazards relating to the Products, to bring such information to the attention of its Personnel, sub-contractors, visitors and customers.
- 11.2 Without prejudice to the foregoing, it is also the Customer's responsibility to provide safe facilities for the reception of Products into storage.

12 COUNTERFEIT PRODUCTS

- 12.1 The Customer acknowledges there are safety and regulatory concerns in relation to medical products that are counterfeit or not approved or packaged for sale in the country of the Customer. To safeguard the welfare of patients and the reputation of JCA, its Affiliates and JCA's and its Affiliates' products, the Customer warrants it will only purchase JCA's products from JCA or its authorised distributors while the Customer has an active account with JCA.
- 12.2 The Customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of JCA attached to or placed upon the Products.
- 12.3 JCA may refuse to continue to supply its products to the Customer if JCA considers on reasonable grounds that the Customer has breached this clause 12. Any such refusal will be without prejudice to JCA's rights to claim damages and indemnities from the Customer.

13 USE AND RESALE OF PRODUCTS

- 13.1 Except as agreed and executed in writing between JCA and the Customer, the Customer agrees that:
- (a) Products purchased in Australia may only be used or resold in Australia and Products purchased for sale in New Zealand may only be used or resold in New Zealand; and
 - (b) the Customer agrees that it is buying the Products for its own internal use only and not for resale to any third party.
- 13.2 Where the Customer supplies Products to any other person in the course of trading, the

Customer must not give or make any undertaking, assertion or representation in relation to the Products without JCA's prior written approval. In any event, the Customer must not make any representations or advertise the Products in any way contrary to any laws including any health and safety regulations and therapeutic goods requirements and must not make any representations or advertise the Products in a way which promotes or suggests the unauthorised use of therapeutic goods.

13.3 RIGHT TO AUDIT

13.4 The Customer agrees to allow JCA or its designee, to periodically conduct audits to verify compliance with these Standard Terms.

13.5 The Customer agrees to provide the audit team with access to all applicable records and/or facilities and provide any additional information on request of the auditors, in order to complete a proper and thorough audit.

14 APPLICABLE LAWS; JCA POLICIES

14.1 The Customer agrees to comply with:

- (a) all applicable laws including in relation to the handling, storage, sale and distribution of the Products; and
- (b) JCA's policies (as amended from time to time), including:
 - i. FCPA policy; and
 - ii. safety reporting, each as set out in Annexure B.

15 PRODUCT RECALLS

15.1 In the event that any of the Products are subject to a recall, product correction, hazard alert or other analogous action by either (i) JCA or (ii) any governmental agency or regulatory authority, the Customer will take all reasonable steps to assist with (including identification of any party to whom the Products have been supplied by the Customer), and will comply with any reasonable directions given by JCA, in respect of such matter.

16 SINGLE USE PRODUCTS

The Customer acknowledges that a Single-Use Product may be used once only and no right or license is conveyed with respect to such Single-Use Products beyond the right to use the products once and only once.

17 INDEMNITY

The Customer indemnifies JCA, its Affiliates, and its and their Personnel against any and all cost, expense, damage, judgment, liability or loss (including consequential loss, loss of profit and loss of expected profit) incurred directly or indirectly as a result of or in connection with any claim, demand or cause of action asserted or brought by a third party in relation to or arising from:

- (a) a breach by the Customer of the Contract (including a breach by the Customer of its warranty in clause 12.1); or
- (b) any negligent act or omission, unlawful conduct or other misconduct by the Customer or its Personnel relating to the Contract or the Products.

18 WARRANTIES

18.1 Other than as specifically set out in these Standard Terms, all warranties implied by statute or law are excluded to the full extent permitted by law.

18.2 JCA warrants that if any of the Products are therapeutic goods for the purposes of the *Therapeutic Goods Act 1989* (Cth) or have a therapeutic purpose as defined in the *Medicines Act 1981 (New Zealand)* as applicable, and that such goods are registered, listed, approved or included on the register of (as the case may be) the relevant regulatory authority.

18.3 When purchased by a Consumer, the Products come with consumer guarantees that cannot be excluded under the Australian Consumer Law. In this case, the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer's rights under this clause 18 are in addition to any statutory rights it may have as a consumer.

19 LIMITATION OF LIABILITY

19.1 To the maximum extent permitted by law, the liability of JCA for a breach of a warranty or condition under this agreement or implied by statute or law about the Products sold, is at the option of JCA, limited to:

- (a) the replacement of the Products;
- (b) the supply of equivalent Products;
- (c) repair of the Products;
- (d) payment of the cost of replacing the Products;
- (e) payment of the cost of acquiring equivalent Products; or
- (f) payment of the cost of having the Products repaired.

19.2 Under no circumstances will JCA be liable for any consequential or indirect loss, direct or indirect loss of profits, loss of business or any special or exemplary damages suffered or incurred in connection with the Contract or the Products or any party's actions or omissions under the Contract.

19.3 The Customer acknowledges and agrees that the Products are acquired for the purposes of a

business and that the guarantees provided under the Consumer Guarantees Act 1993 (New Zealand) shall not apply.

20 INTELLECTUAL PROPERTY

- 20.1 The Customer is not permitted to use any of JCA's or its Affiliates' intellectual property for any purpose without JCA's or any of its Affiliates' prior written consent.
- 20.2 No right, title, interest or license in any of JCA's or its Affiliates' intellectual property is granted to the Customer under the Contract.

21 FORCE MAJEURE

The parties shall be excused for delays in performance or failure of performance (except payment of amounts due) to the extent arising from causes beyond such party's reasonable control, including without limitation, strikes, wars, fires, acts of terror or acts of God, such as floods and earthquakes. In the event of any such event or condition, the party whose performance is excused shall notify the other party as soon as practicable and shall make diligent efforts to perform its obligations at its earliest opportunity.

22 CONFIDENTIALITY

The Customer shall keep in confidence and shall not, without securing JCA's prior written consent, originate any publicity (including any news release or public announcement) or disclose to any third party any Confidential Information, except:

- (a) to its employees or representatives requiring the information for the purposes of the Order, provided they are made aware of these restrictions; or
- (b) if the Customer is required to do so by law or by a stock exchange; or
- (c) if the Customer is required to do so in connection with legal proceedings relating to the Products or the Contract.

23 DISPUTE RESOLUTION

- 23.1 Nothing in this clause prevents a party seeking urgent injunctive or similar interim relief from a court.
- 23.2 If a dispute arises between the parties in connection with the Contract, the parties undertake in good faith to use all reasonable endeavours to settle the dispute by way of good faith negotiation (including escalating the dispute to executive level).

24 GENERAL

- 24.1 (**notices**) Notices, consents and other communications in connection with the Contract must be in "writing" and hand-delivered or sent by pre-paid post to the other party's representative identified in the Contract. Notices take effect as follows:
- (a) hand-delivery – at the time the delivery is made; and
 - (b) notices sent by pre-paid post – one Business Day after posting.

24.2 (**assignment**) The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of JCA.

24.3 (**no exclusivity**) The relationship between the parties is not one of exclusivity.

24.4 (**waiver/amendment**) Subject to clause 1.2, the terms of these Standard Terms may only be amended by agreement of the parties in writing which specifically refers to this clause 24.4. Any variation to these Standard Terms or representations about the Products which do not satisfy this clause 24.4 shall have no effect. A waiver of rights under this agreement shall only be effective if given in writing to the other party and specifically refers to this clause 22.4.

24.5 (**exercise of rights**) JCA may exercise a right, remedy or power in any way JCA considers appropriate. If JCA does not exercise a right, remedy or power at any time, this does not mean that JCA cannot exercise it later.

24.6 (**survival**) Any term of these Standard Terms and the Contract survives the expiry, cancellation or termination of the Contract if required to give effect to it.

24.7 (**severability**) If the whole or any part of a provision of these Standard Terms is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of these Standard Terms has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of these Standard Terms or is contrary to public policy.

24.8 (**no partnership**) Nothing contained or implied in these Standard Terms or the Contract will create a joint venture, partnership or principal and agency relationship between the parties and neither party will represent that it is the joint venturer, the partner, principal or the agent of the other party and neither party will have power to bind or obligate the other party in any manner whatsoever.

24.9 (**construction**) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, these Standard Terms or any part of it.

24.10 (**governing law**) The laws of the NSW, Australia will govern the Contract and the parties submit to the exclusive jurisdiction of the courts of NSW, Australia.

24.11 (**PPSA notice**) Neither party need give any notice under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

25 INTERPRETATION

25.1 In these conditions the following words have the following meanings:

"**Affiliate**" has the meaning given to the term "related body corporate" in the Corporations Act 2001 (Cth) and the Companies Act 1993 (New Zealand), as applicable.

"Confidential Information" means all confidential, non-public or proprietary information, regardless of how the information is stored or delivered, exchanged between the parties relating to JCA's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

"Contract" means the contract for the supply of Products between JCA and the Customer on these Standard Terms formed in accordance with clause 2.6.

"Customer" means the person(s), firm or company who purchases the Products from JCA.

"JCA" means Janssen-Cilag Pty Limited (ABN 47 000 129 975).

"Order" means an order by the Customer to purchase Products from JCA, however made.

"Personnel" of a party includes an employee, servant, agent, officer or director of that party.

"PPSA" means the Personal Property Securities Act 2009 (Cwth).

"Products" means any products agreed in the Contract to be supplied to the Customer by JCA.

"Single-Use Product" means any Product sold by JCA that is labelled "For Single Use" or "Single Use Only" or "Not For Re-Use" or with language similarly indicating that the product is intended to be used once only.

"Standard Terms" means the terms and conditions set out in this document, as amended in accordance with this document.

"Website" means JCA's web page at which the Standard Terms are posted, currently at <https://www.janssen.com/australia/terms-and-conditions>.

- 25.2 **(include)** The verb "include" (in all its parts, tense and variance) is not used as, nor is it intended to be interpreted as, a word of limitation, and the words "including", "for example" or "such as" do not limit what else is included.
- 25.3 **(person)** The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency.
- 25.4 **(successors)** A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 25.5 **(singular includes plural)** The singular includes the plural and vice versa.
- 25.6 **(headings)** all headings in these Standard Terms are for reference purposes only and do not define, limit or in any way affect the meaning or interpretation of these Standard Terms.
- 25.7 **(legislation)** a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it.
- 25.8 **(time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

Effective 14 April 2020

Annexure A Order

Australia:

JCA hours of business are 8.30am to 5.00pm, Monday to Friday, through the following channels:

Phone: (02) 9815 3333
1800 226 334 (Toll Free) **Fax:** (02) 9887 4884
1800 202 388 (Toll Free)

Email: customerservice@janau.jnj.com

- Refrigerated product and narcotics will not be dispatched on a Friday due to quality control procedures.

New Zealand:

JCA hours of business are 8.30am to 5.00pm, Monday to Friday, through the following channels:

Phone: (09) 523 8700
0800 800 8706 (Toll Free) **Fax:** (02) 9887 4884
1800 202 388 (Toll Free)

Email: customerservicenz@its.jnj.com

- Refrigerated product and narcotics will not be dispatched on a Friday due to quality control procedures.

Effective 14 April 2020

Annexure B

Anti-Corruption Laws

Neither party shall perform any actions that are prohibited by local and other anti-corruption laws (collectively "Anti- Corruption Laws") that may be applicable to one or both parties to the Agreement. Without limiting the foregoing, neither party shall make any payments, or offer or transfer anything of value, to any government official or government employee, to any political party official or candidate for political office or to any other third party related to the transaction in a manner that would violate Anti-Corruption Laws.

Safety Reporting

Customer must forward to Janssen Drug Safety any adverse events and special situations (including but not limited to reports of exposure during pregnancy or breastfeeding; overdose, abuse and misuse; medication errors (includes potential, intercepted or actual); suspected transmission of any infectious agents; off label use; occupational exposure; inadvertent or accidental exposure, failure of expected pharmacological action, unexpected therapeutic or clinical benefit, expired drug use and falsified medicine) reported within one (1) calendar day of date of first receipt. For the purposes of this Agreement, Adverse Event shall mean any untoward medical occurrence in a patient or a clinical-trial subject administered a medicinal product and which does not necessarily have to have a causal relationship with this treatment. An Adverse Event can therefore be any unfavourable and unintended sign (for example, an abnormal laboratory finding), symptom, or disease temporally associated with the use of a medicinal product, whether or not considered related to this medicinal product.

The Adverse Events and special situations should be sent to: Janssen Drug Safety

Email: LSO_AUST@its.jnj.com Tel: +61 2 9815 3260

Fax: +61 2 9888 9817