



## Conditions of Sale: Morningside Pharmaceuticals Ltd

These terms and conditions should be read in conjunction with Morningside's privacy policy which can be found [here](#).

### 1. Definitions

1.1. In these conditions:

1.1.1. "Business Days" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

1.1.1. "Buyer" means any person, firm, company or body to whom Morningside supplies any Goods;

1.1.2. "these Conditions" means the terms and conditions set out below (as amended from time to time by Morningside) and any other conditions and/or terms of sale set out or referred to in Morningside's acknowledgement of order;

1.1.3. "Contract" means any contract between Morningside and the Buyer for the sale of Goods by Morningside to the Buyer, which contract shall comprise only these Conditions together with any terms specifically agreed in writing between the parties;

1.1.4. "Goods" means any goods which Morningside agrees to sell to the Buyer (including any part or parts of them);

1.1.5. "Incoterms" means the current version (as at the date of the Contract) of the International Chamber of Commerce delivery of goods terms, accessible at [www.iccwbo.org](http://www.iccwbo.org), the current version in force as at the date these Conditions were last reviewed being the 2010 edition.

1.1.6. "Intellectual Property Rights" means all copyright, database rights, topography rights, design rights, trade marks, patents, domain names and any other intellectual property rights of a similar nature (whether or not registered) subsisting anywhere in the world in or associated with Goods which are Morningside's own branded goods;

1.1.7. "International Supply Contract" means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977;



1.1.8. “personal data” has the meaning ascribed to it in the UK Data Protection Legislation;

1.1.9. “Morningside” means Morningside Pharmaceuticals Limited (Company number 2672877) whose registered office is Nene House, 4 Rushmills, Northampton, NN4 7YB.

1.1.10. “UK Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. Contract Formation**

2.1. No order in pursuance of any quotation or otherwise will be binding on Morningside unless and until it is accepted by Morningside in a written acknowledgement of order or by despatch of the Goods. Orders for items not available at time of order will be held by Morningside pending their availability and will be fulfilled when stocks are available unless prior written cancellation is given by the Buyer in accordance with these Conditions. Otherwise, an order shall be treated as an offer by the Buyer to contract with Morningside, but shall not be binding on Morningside until it is accepted by Morningside in a written acknowledgement of order or by despatch of the Goods.

2.2. Any quotation given by Morningside does not constitute an offer and may be withdrawn by Morningside at any time. In any event, any tender or quotation by Morningside is deemed withdrawn unless accepted in writing by the Buyer within 30 days from its date, unless stated otherwise in the relevant tender or quotation.

2.3. Morningside does not accept any terms and conditions of contract supplied by the Buyer including but not limited to the Buyer’s standard conditions of purchase. Acceptance of an order by Morningside shall be deemed acceptance of these Conditions only.

2.4. Each Contract shall be subject to these Conditions to the exclusion of any conditions of the Buyer and any variation to these Conditions will only bind Morningside if expressly agreed in writing by a director of Morningside.



2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by Morningside shall be subject to correction by Morningside without any liability on the part of Morningside.

2.6. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate. However, and to the extent that any Goods are to be manufactured in accordance with a Buyer's specification or under a Buyer's labelling, the Buyer shall indemnify Morningside against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Morningside in connection with any claim made against Morningside for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Morningside's manufacture of such Goods.

2.7. All samples, drawings, descriptive matter, specifications and advertising issued by Morningside and any descriptions or illustrations contained in Morningside's catalogues, brochures or websites are issued or published for the sole purpose of giving any approximate idea of the Goods described in them. They shall not form a representation and shall not form part of the Contract and this is not a sale by sample. In addition, Morningside reserves the right to amend any specification of Goods if required by any applicable statutory or regulatory requirements.

2.8. These Conditions will apply to each Contract even where Morningside has not given a written acknowledgement of the Buyer's order provided that the Buyer has had prior notice of these Conditions.

2.9. All Goods are sold by Morningside subject to the following:-

2.9.1. the Goods must be resold in their original packaging and any trade marks must not be deleted or obscured; and

2.9.2. acceptance of the Goods by a wholesaler will be deemed to be an agreement by the wholesaler to notify its retail customer that the conditions in clause 2.9.1 above are applicable to any resale of the Goods.

### **3. Prices and Payment**

3.1. Subject to clause 3.2 the Contract price of the Goods shall be the price set out in Morningside's acknowledgement of order, in Morningside's pro-forma invoice (for International Supply Contracts), or otherwise the price specified by Morningside in writing from time to time, including in the latest price list as circulated by Morningside to the Buyer. Unless specified otherwise by Morningside in writing, payment shall be made by the Buyer in the currency specified in any acknowledgement of order or quotation or invoice issued by Morningside.

3.2. Unless agreed otherwise in writing Morningside shall be entitled to increase its prices at any time prior to despatch to take account of any increase in the cost to Morningside of purchasing or supplying the Goods (including but not limited to any increase arising from any changes to the Buyer's order requested by the Buyer or any change in carriage charges, insurance premiums, exchange rates, taxes or customs duties, and increases in labour, materials and other manufacturing costs) and such increased prices ruling at the date of despatch by Morningside shall be substituted for the previous Contract price.

3.3. Unless specified otherwise in writing by Morningside all prices quoted are exclusive of VAT or any other applicable sales tax in the country in which the Buyer is resident, which the Buyer shall be obliged to pay in addition to the quoted price, together with the costs and charges of packaging, insurance, handling, carriage, freight, and transport, and customs, import or other duties charged in respect of the Goods which shall be invoiced to the Buyer. For the avoidance of doubt, unless otherwise agreed by Morningside in writing, the Buyer shall be responsible for obtaining, at its own costs, any import licences and other consents in relation to the Goods as are required from time to time.

3.4. Morningside shall be entitled to deliver any order in instalments and payment for each instalment shall be a condition of delivery of subsequent instalments.

3.5. Unless otherwise agreed by Morningside in writing, the Buyer shall pay for all Goods in full no later than 30 days from the date of invoice. The time for payment of the price shall be of the essence of the Contract.

3.6. Without prejudice to Morningside's other rights and remedies, if the Buyer is overdue with any payment owed to Morningside, Morningside reserves the right to charge the Buyer interest on any overdue amount at the rate of 4% per annum over the base rate from time to time at HSBC UK Bank plc, or at the rate specified under or pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher) such interest to accrue on a daily basis until the date payment is received by Morningside in full, after as well as before any judgment.



3.7. Payment shall be made by the Buyer without deduction or set off of any kind.

3.8. Without prejudice to the other rights of Morningside the Buyer shall pay all costs and expenses (including but not limited to legal expenses and other debt collection expenses) incurred by Morningside in recovering and attempting to recover all or any amounts due to Morningside from the Buyer.

3.9. Persons wishing to open new credit accounts must submit bank and trade references as required by Morningside from time to time.

#### **4. Delivery**

4.1. Morningside will agree at the outset of any Contract the form and method of delivery for its Goods to the Buyer. However, unless otherwise agreed in writing by Morningside, the Buyer shall collect the Goods from Morningside's trading premises at 5 Pavilion Way, Castle Business Park, Loughborough, Leicestershire, LE11 5GW or such other location as may be advised by Morningside prior to delivery within five business days of Morningside notifying the Buyer that the Goods are ready for collection.

4.2. If Morningside have agreed with the Buyer that Morningside shall be responsible for the delivery the Goods to the Buyer, Morningside shall arrange for delivery of such Goods to the location set out in the Contract. Please note that due to regulatory requirements, Morningside may not be able to alter the location of delivery from an approved delivery location after a Contract has formed.

4.3. If the Contract is an International Supply Contract, Morningside and the Buyer shall agree as part of the order process which of the Incoterms shall apply to the Contract and this shall be specified in any pro-forma invoice by Morningside. In the event that an Incoterm is not specified, Morningside shall delivery all Goods EXW (Exworks).

4.4. In the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. Morningside shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979.

4.5. If the Buyer fails or refuses to take delivery of the Goods at the time and place stated for delivery, or the Buyer fails to give Morningside adequate delivery instructions then, without prejudice to any other rights Morningside may have, Morningside may:



4.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including but not limited to insurance) of storage and abortive delivery costs and associated costs; and/or

4.5.2. sell the Goods at the best price reasonably obtainable and (after deducting all reasonable storage and selling and other expenses of Morningside) account to the Buyer for the excess over the price under the Contract after deducting Morningside's costs and expenses or charge the Buyer for any shortfall below the price under the Contract.

4.6. All delivery and performance dates quoted by Morningside or included in the Contract are given in good faith but are estimates only. Morningside reserves the right to change delivery dates and shall notify the Buyer as soon as reasonably practicable. Time for delivery and/or performance shall not be of the essence of the Contract and Morningside shall have no liability for late delivery or performance. Morningside shall also be entitled to defer delivery until all monies due from the Buyer (whether under the Contract or otherwise) have been received.

4.7. Morningside may at its discretion deliver the Goods by instalments and invoice the Buyer for each instalment individually. Failure by Morningside to deliver any one or more of the instalments or any claim by the Buyer in respect of one or more of the instalments shall not entitle the Buyer to refuse to accept delivery of any other instalment.

4.8. If Morningside delivers a quantity of Goods up to ten per cent more or less than the quantity stated in the Contract the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall, and the Contract price shall be adjusted on a pro rata basis to take account of such surplus or shortfall.

4.9. Unless specified otherwise by Morningside or unless the Contract is an International Supply Contract, in which case the Incoterms shall apply (such relevant Incoterm having been specified in any Contract or proforma invoice, or otherwise being EXW (Exworks) if unspecified), delivery shall take place immediately prior to the offloading of the Goods at the Buyer's premises or at such other premises as the Buyer and Morningside may agree.

4.10. If Morningside fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Morningside shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event (as defined below) or the Buyer's failure to provide Morningside with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

## **5. Title and Risk**

5.1. Except where the Contract is an International Supply Contract, in which case the latest edition of Incoterms current at the date of the Contract shall apply, risk in the Goods will pass to the Buyer on the earlier of:-

5.1.1. completion of delivery in accordance with clause 4 above;

5.1.2. when the Goods are ready for delivery but delivery is postponed at the Buyer's request; or

5.1.3. the date on which the Buyer fails to take delivery in accordance with the Contract.

5.2. Until the Contract price of the Goods comprised in the Contract or any other contract between the Buyer and Morningside, and all other sums whatsoever which are or may become outstanding from the Buyer to Morningside, shall have been paid or satisfied in full as cleared funds:-

5.2.1. the property in the Goods remains vested in Morningside (notwithstanding the delivery of the same and the passing of risk therein) and the Buyer shall hold the Goods as the fiduciary agent and bailee of Morningside;

5.2.2. the Buyer shall insure the Goods and, in the event of any loss or damage, shall immediately on receipt of the insurance monies remit to Morningside the full Contract price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee for Morningside;

5.2.3. the Buyer shall store the Goods in such a way (i) that is appropriate for such Goods, in accordance with any packaging instructions, legislation relating to such Goods and any other instructions of Morningside (and Morningside may request proof of storage on these terms); (ii) that they can be readily identified as being Morningside's property; and (iii) that ensures that no identifying mark or packaging on or relating to the Goods is removed, defaced or obscured;

5.2.4. the Buyer shall on request notify Morningside of the precise location of each item of the Goods, identified where applicable by its invoice number, by supplying Morningside at its expense within seven days of its request with a schedule of the said location;



5.2.5. the Buyer may sell the Goods in the ordinary course of business in the name of the Buyer as principal and not as agent for Morningside; but in such circumstances, the Buyer acts as Morningside's bailee in respect of such sales and shall immediately upon such sale, and whether or not payment has become due under clause 3, remit to Morningside the full purchase price of the Goods sold less any part of it which has already been paid and, until such amount has been so remitted, shall hold such amount as trustee for Morningside;

5.2.6. Morningside may at any time revoke the Buyer's power of sale;

5.2.7. the Buyer's power of sale shall in any event automatically cease in any of the circumstances set out in clause 8.3 and the Buyer shall notify Morningside immediately in such circumstances;

5.2.8. the Buyer shall notify Morningside without delay of any attachment of the Goods or actions by third parties which might infringe Morningside's title to the Goods;

5.2.9. upon determination of the Buyer's power of sale Morningside shall be entitled by itself, its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such Goods or their proceeds of sale and Morningside shall be entitled to claim from the Buyer the costs and expenses incurred by Morningside in and ancillary to the process of removal and repossession; and

5.2.10. the Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Morningside, but if the Buyer does so, all moneys owing by the Buyer to Morningside shall (without prejudice to any other right Morningside may have) immediately become due and payable.

5.3. Nothing in these Conditions shall:

5.3.1. constitute or be deemed to have constituted the Buyer as Morningside's agent, or

5.3.2. prevent Morningside from maintaining an action for the price, notwithstanding that the property in the Goods may not have passed to the Buyer.



## **6. Damage or Loss in Transit**

6.1. Morningside will have no liability for damage in transit, shortage of delivery, non-delivery or loss of Goods unless the Buyer shall have given to Morningside written notice of such damage, shortage or loss with reasonable particulars thereof within 2 Business Days of receipt of the Goods or (in the case of total loss or non-delivery) of receipt of the invoice or other notification of despatch. Morningside's liability, if any, shall be limited to resupplying such Goods and it shall be a condition precedent to any such liability that the Buyer shall if so requested return the damaged Goods at its own expense to Morningside within 14 days of such request.

6.2. Without prejudice to any other provision of these Conditions (in particular, but without limitation, clause 3) if Morningside has submitted an invoice for Goods and the Buyer claims that the Goods have not been delivered, Morningside may request proof of delivery at the Buyer's own expense and at the sole discretion of Morningside, may be entitled to such proof as Morningside has. A request for proof of delivery must be made in writing by the Buyer to Morningside within 7 days of receipt of the relevant invoice.

## **7. Limitation of Liability**

7.1. Morningside's liability for defective Goods is limited to resupplying or (in its discretion) repairing Goods or providing a credit to the Buyer of the Contract price for Goods which in each case are found within three months of delivery to be defective because of faulty or incorrect design, workmanship, parts or materials.

7.2. If there is any error in any weight, dimension, colour or other description which has formed a representation or is part of the Contract Morningside's liability in respect of any loss, costs, expenses, liability or damage which the Buyer suffers as a result shall not exceed the price of the Goods in respect of which the description is incorrect.

7.3. Morningside shall have no other or further liability in respect of any direct or indirect or consequential loss, costs, damage or expense sustained by the Buyer arising from or in connection with any defect, failure or error in the Goods save as expressly set out in this clause 7.

7.4. Subject to clause 7.9, in the event of any negligence by Morningside its employees or agents in or in connection with the supply of the Goods or the design or manufacture thereof, Morningside shall have no liability to the Buyer save as expressly set out in this clause 7.



7.5. Morningside shall have no liability to the Buyer under these Conditions or under any Contract or otherwise:

7.5.1. where the Buyer has not within 7 days of discovering the same and within the time period specified in clause 7.1 given to Morningside notice of any defect in the Goods and provided authority for Morningside's employees or agents to inspect the Goods or (at Morningside's request) returned the relevant Goods to Morningside at Morningside's request and at the Buyer's expense for the purposes of inspection; or

7.5.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal use, failure to follow the manufacturer's instructions, or the instructions set out in the instruction manual, or any other instructions (including but not limited to any relevant legislation or regulations) misuse or alteration or unauthorised repair or use of the Goods; or

7.5.3. where the allegedly defective Goods have not been returned to Morningside in their original packaging together with all related accessories and components.

7.6. Morningside shall in no circumstances be liable for any loss of profits, loss of contracts, loss of business or loss of reputation of the Buyer even if Morningside has been advised of the possibility of the same.

7.7. Morningside shall in no circumstances be liable for any indirect or consequential losses, costs or expenses of the Buyer.

7.8. All Goods are supplied with the benefit of the terms implied by section 12 of The Sale of Goods Act 1979. Subject to this, and to the fullest extent permitted by law all other warranties, conditions and other terms implied by statute or common law (including but not limited to those in the Sale of Goods Act 1979) are excluded from the Contract.

7.9. Nothing in these Conditions limits or excludes, or is intended to limit or exclude Morningside's liability for death or personal injury caused by its negligence, nor for fraudulent misrepresentation, nor for any matter in respect of which it would be unlawful for Morningside to restrict or exclude liability.

7.10. Morningside shall not be liable for any delay or failure to perform its obligations under any Contract to the extent that such performance is delayed, prevented or hindered by acts of God, failure of suppliers, breakdown of machinery, war, riot, sabotage, explosions, strikes, lockouts, shortages of labour, materials or fuel, fire, storm, flood or any other circumstances which are outside the reasonable control of Morningside ("Force Majeure Events"). If delivery is delayed for more than 3 months from receipt of the order by



Morningside as a result of a “Force Majeure Event”, then either Morningside or the Buyer may cancel the Contract and Morningside will refund to the Buyer any payment made by the Buyer for such order but Morningside shall have no liability in respect of such cancellation.

7.11. Subject to and without prejudice to the other provisions of this clause 7 and the provisions of clause 10, if Morningside has any liability to the Buyer under or arising out of a Contract (whether in contract, tort (including but not limited to negligence) or otherwise) such liability shall not in aggregate exceed the Contract price.

7.12. Nothing in these Conditions shall affect the statutory rights of a person dealing as a consumer as defined in section 12 of the Unfair Contract Terms Act 1977.

## **8. Cancellation and Termination**

8.1. No cancellation, suspension or variation of the Contract by the Buyer shall be valid unless agreed by Morningside in writing and such agreement will only be given on terms which fully compensate Morningside in respect of any losses, costs, liabilities and expenses arising as a result of such cancellation.

8.2. Without limiting its rights or remedies, if there shall be a Default as defined in clause 8.3 below Morningside may, within a reasonable time after the Default defer or cancel any further deliveries, stop any Goods in transit and/or terminate the Contract (and any other order or contact Morningside may have with the Buyer) with immediate effect by giving written notice to the Buyer, but without prejudice to its rights to the full purchase price for Goods delivered and damages for any loss, cost, expense, liability or claim suffered by Morningside in consequence of such termination.

8.3. A Default shall be any of the following:

8.3.1. failure by the Buyer to make any payment when it becomes due;

8.3.2. breach of contract by the Buyer;

8.3.3. the Buyer exceeds the credit limit set by Morningside;

8.3.4. if the Buyer takes any step or action to become bankrupt, insolvent, or to enter provisional liquidation, or has a petition presented in respect of a winding up order in respect of it, or has an order made for the appointment of an administrator to manage the affairs, business and property of it, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Buyer, or notice of intention to appoint an administrator is given by the Buyer or any of its directors, or a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) levied upon its assets or under the national law of its own country suffers the equivalent of any of them, or takes any step with a view to entering into a voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986); or

8.3.5. if the Buyer ceases or threatens to cease to trade or carry on a substantial part of its business, or if Morningside shall reasonably doubt the solvency of the Buyer or its capability to fulfil its obligations under the Contract.

8.4. Upon termination of the Contract for any reason, the Buyer shall immediately pay to Morningside all of Morningside's outstanding unpaid invoices, together with any interest, costs, expenses and losses suffered by Morningside.

## **9. Data Protection**

9.1. Morningside will process any personal data provided to it by the Buyer, its officers, employees, consultants or agents, in accordance with Morningside's privacy policy, from time to time, contained [here](#) and by requesting any goods or services from Morningside the Buyer acknowledges that all personal data provided will be processed in accordance with that privacy policy.

## **10. Intellectual Property Rights**

10.1. The Buyer acknowledges that:

10.1.1. the Intellectual Property Rights are Morningside's (or its licensor's) property and shall remain vested in Morningside (or its licensor); and

10.1.2. nothing in this agreement shall be construed as conferring any licence or granting any rights in favour of the Buyer in relation to the Intellectual Property Rights.

10.2. The Buyer shall not remove or tamper with any copyright notices, confidential or proprietary legends or identification on the Goods.



10.3. The Buyer shall not use (other than pursuant to this agreement) or seek to register any trade mark or trade name (including but not limited to any company name) which is identical to, confusingly similar to or incorporates any trade mark or trade name which Morningside or any associated company of Morningside owns or claims rights in anywhere in the world.

10.4. The Buyer shall promptly and fully notify Morningside of:

10.4.1. any actual, threatened or suspected infringement of any Intellectual Property Rights which comes to the Buyer's notice; and

10.4.2. any claim by any third party that comes to the Buyer's notice that the sale or advertisement of the Goods infringes the rights of any person.

10.5 The Buyer agrees (at Morningside's request) to do all such things as may be reasonably required to assist Morningside in taking or resisting any proceedings in relation to any infringement or claim referred to in clause 10.4 and in the event of any claim, proceeding or suit by a third party against the Buyer alleging an infringement of the third party's intellectual property rights, Morningside shall be given sole control of the defence of the claim, proceeding or suit, and Morningside shall not be liable for infringements to the extent that they arise out of or in connection with modifications to the Goods made by anyone except Morningside or its authorised representative, or out of use or combination of the Goods with products or third party materials not specified or expressly approved in advance in writing by Morningside, or where the claim, proceeding or suit arises from Morningside's adherence to the Buyer's requested changes to any specification for the Goods or from infringing items of the Buyer's origin, design or selection.

## **11. Returns Policy**

11.1. If the Buyer finds a discrepancy with a Contract, the following provisions shall apply in respect of returns of Morningside Goods, and the Buyer shall only be entitled to a refund if it complies in full with the below procedure:

11.1.1. Morningside will only accept returns of Goods if any Goods are received damaged, there is a short shipment, there has been a picking and packing error, or there is a product/batch recall of any Goods. Any other reason for a return shall be solely at Morningside's discretion and shall not necessarily result in a full refund being due to the Buyer. For the avoidance of doubt, Morningside will not accept returns for any cold chain Goods or Goods which are exported outside of the United Kingdom;



11.1.2. all claims and notification of any shortage, damaged stock or picking and packing error must be immediately reported by telephone (01509 217705) and confirmed in writing within 48 hours of delivery. Notification in writing should be sent to sales@morningsidepharm.com and to Systems@morningsidepharm.com;

11.1.3. any request for the return of Goods for any reason must be accompanied by the invoice number and the date on which the Goods were delivered together with the reason for the request, product details/batch numbers, account name and full contact details of the Buyer. Acceptable temperature records will also be required to be produced to Morningside before a return can be considered to be authorised;

11.1.4. once a return is authorised by Morningside, a customer returns form will be sent to the Buyer for completion, usually within 2 working days of the Buyer's initial notification. To avoid delays, the Buyer shall complete the form in full, and ensure that it is signed by the named "Responsible Person" or their nominated deputy on the Buyer's Wholesale Dealers Authorisation to confirm that medicines have been stored and handled as in accordance with EU Directive 2001/83/EC relating to medicinal products for human use as amended by 2004/27/EC. Additional temperature records may be requested by Morningside to support this prior to a return being authorised;

11.1.5. on receipt of the completed customer returns form, and once approved, Morningside will contact the Buyer to arrange uplift of such affected Goods. Uplift by any other means will not be accepted by Morningside, and the Buyer should ensure that all returns should be packaged with the customer returns form in a manner to avoid damage of the Goods in transit;

11.1.6. any returned Goods will be checked and verified by Morningside's warehouse department and once authorised, a credit note will then be raised for 100% of the product price and sent to the Buyer within 3 working days of receipt of the return;

11.1.7. at Morningside's discretion, depending on value, Morningside may ask the Buyer to arrange for destruction of any of the Goods; and

11.1.8 where any Goods are returned requiring reboxing or rework, Morningside reserves the right to make a charge for the costs for carrying out such work.

11.2. For International Supply Contracts, the following additional provisions in this clause

11.2 shall apply in respect of returns of Morningside Goods (and the procedure in clause

11.1 shall be amended accordingly):



11.2.1. the Buyer may not return allegedly defective Goods, but shall instead submit a sample of the Goods to Morningside for investigation; and

11.2.2. the Buyer shall if requested to do so by Morningside, destroy promptly any Goods found to be defective after investigation by Morningside and shall provide Morningside with written proof of such destruction on demand. Such a Buyer shall only be entitled to replacement Goods or a credit but not repair of such Goods.

11.3. In respect of any product recall, the Buyer agrees to co-operate fully with Morningside in taking all necessary steps to remove the relevant Goods from the marketplace, and co-operate with all reasonable requests.

## **12. Authorisations**

12.1 The Buyer hereby warrants that it is properly registered or authorised and holds all relevant and necessary licences under the laws of its place of business to receive the Goods and Morningside shall have no liability for any failure by the Buyer to be so registered or authorised.

12.2 The Buyer hereby warrants:

12.2.1 that it has provided to Morningside all necessary information and instructions regarding packaging requirements for the Goods in order to comply with all relevant legislation in its place of business or for the territory in which it may resell the Goods;  
12.2.2 that it has and will comply with all relevant legislation regarding its reception and storage of the Goods; and

12.2.3 that it has notified Morningside reasonably in advance and in writing of any specific legislation or requirements for the Goods relating to their packaging or so that it can comply with all relevant and necessary legislation.

12.2.4 The Buyer is responsible for checking the patent situation in the country of destination and in the country of sale for all Goods purchased. Morningside shall have no liability for any patent infringement.

### **13. General**

13.1. Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time be notified pursuant to this provision to the party giving the notice. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this clause 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; and if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

13.2. Failure by Morningside to enforce strict compliance with these Conditions by the Buyer shall not constitute a waiver of any provisions of these Conditions. No waiver by Morningside of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3. If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

13.4. Morningside shall be entitled to sub-contract, assign or transfer all or any of its rights and/or obligations under the Contract to any person, firm or company. The Buyer shall not be entitled to assign all or any of its rights and/or obligations under the Contract without the prior written consent of Morningside.

13.5. These Conditions constitute the entire agreement between the parties in respect of the Contract and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Conditions.

13.6. No person who is not a party to a Contract shall be entitled to take the benefit of it by virtue of the Contracts (Rights of Third Parties) Act 1999 unless he is a permitted assignee of Morningside.

13.7. All Contracts shall be governed by and interpreted in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

**Last updated 6 November 2018**

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