

AMO United Kingdom Limited
Standard Terms and Conditions of Supply
January 2024 Version

1 Definitions

- "Company" means AMO United Kingdom Limited incorporated in England and Wales under number 435984 whose registered office is at 9 Mile Ride, Wokingham, Berkshire RG40 3EW, United Kingdom (AMO UK)
- "Contract" means the Order accepted by the Company and incorporating these conditions
- "Customer" means the company, firm or organisation whose Order for the Goods is accepted by the Company
- "Goods" means the goods which the Company agrees to supply in accordance with these conditions and which are identified on the Order "Order" means the order for the purchase of the Goods submitted by the Customer to the Company
- "Proforma Account Holder" means a customer that does not have a credit account with the Company.
- 1.1 A reference to a party includes its successors or permitted assigns.
- 1.2 Any reference to a law is a reference to it as in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Where a condition provides for a list of items following the word "including" or "includes", then such list is not to be interpreted as being an exhaustive list.
- 1.4 A reference to "writing" or "written" includes emails.

2 Incorporation of Conditions

- 2.1 These conditions shall apply to the Contract to the exclusion of all other terms and conditions, including any terms and conditions which the Customer may purport to apply under any order (including the Order), confirmation of order or similar document or in any correspondence.
- 2.2 No variation to these conditions shall be binding unless agreed in writing by an authorised representative of the Company.
- 2.3 The Contract constitutes the entire understanding between the Company and the Customer with respect to the supply of the Goods and supersedes and extinguishes all previous agreements, statements, promises, assurances, warranties, representations and understandings between the parties whether written or oral relating to the subject matter of this Contract. The Customer acknowledges that it has not relied upon and shall have no remedies in respect of any statement made orally or in writing by the Company, its employees or agents to the Customer, which is not expressly incorporated into the Contract. Subject to condition 8.7 the Customer shall not have any claim for misrepresentation on the basis of any statement in the Contract.
- 2.4 Conditions 4.5, 4.6, 4.8, 6.4, 6.11 and 6.12 shall not apply in the case of Customers that are Proforma Account Holders.

3 Ordering

- 3.1 Each Order (whether submitted by telephone, post, email or electronic ordering system) shall be deemed to be an offer by the Customer to purchase the Goods pursuant to these conditions. The Company may, at its complete discretion, refuse to accept any Order.
- 3.2 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any Order (including the description of the Goods ordered).
- 3.3 The Company may cancel the Contract at any time before the Goods are delivered by giving written notice to the Customer. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 3.4 In the event that any fixed term contract or fixed term pricing agreed between the parties expires ("Fixed Arrangement") and the Customer continues to place Orders which the Company fulfils, the Fixed Arrangement shall be deemed terminated and, in the absence of written agreement between the parties to the contrary:
- 3.4.1 the price to be paid for the Goods shall be the Company's list price for the Goods that is in place at the time the Customer places an Order; and
- 3.4.2 the supply of the Goods shall be governed by the Company's then current Standard Terms and Conditions of Supply that are in place at the time the Customer places an Order, as may be amended by the Company from time to time,
- to the exclusion of any and all other terms and conditions which the Customer may attempt to impose.

Samples

- 3.5 For the avoidance of doubt, where no order is placed and the Company provides goods free of charge to the Customer as part of a sampling programme, clinical trial or compassionate use programme ("Samples"), these conditions shall, to the extent applicable, apply to such Samples.

4 Price and Payment

- 4.1 Unless otherwise agreed by the Company in writing, the price of the Goods shall be the price listed in the Company's price list current at the date of the Company's acceptance of the Order. The Company has the right entirely at its discretion to alter the prices of the Goods by giving no less than thirty (30) days' notice to the Customer.
- 4.2 Standard delivery shall be in accordance with condition 6.1. If the Customer requires delivery within an alternative time period, the Customer shall contact the Company's Customer Support Centre to agree an alternative time period, which will be charged at an additional cost to the Customer. All delivery times are subject to the Goods being in stock at the time of the Company's acceptance of the Order.
- 4.3 The price is exclusive of VAT and all other applicable taxes and duties, which the Customer shall additionally be liable to pay the Company.
- 4.4 The price is inclusive of packaging, insurance and carriage (for standard delivery). However, the Company reserves the right at its absolute discretion to charge, and the Customer shall pay, the costs of packaging, carriage and insurance in relation to any particular Order in addition to the price of the Goods.
- 4.5 The Customer shall pay the price within thirty (30) days of the date of the Company's invoice (the "Due Date"). In the case of payment other than by cash, payment shall only be deemed to have been made on receipt of cleared funds. The time of payment of the price shall be of the essence.
- 4.6 If the Customer fails to make payment by the Due Date then the Company shall be entitled to charge the Customer interest (both before and after judgement) on the amount unpaid, in accordance with the Late Payment in Commercial Debts (Interest) Act 1998.
- 4.7 The Customer shall not in any circumstances or for any reason whatsoever (except as required by law) be entitled to make any deduction or withhold any sum from the price by way of set-off or otherwise. The Company 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 the Company to the Customer.
- 4.8 All payments payable to the Company under the Contract shall become due immediately on its termination, despite any other provision.

5 The Goods

- 5.1 The quantity and description of the Goods shall be as set out in the Order.
- 5.2 The Goods shall be supplied in accordance with the description in the Order. The Company may from time to time make changes to the specification of the Goods, which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 5.3 The specifications and designs of the Goods (including the copyright, design right and other intellectual property in them) shall as between the parties be and remain the property of the Company.
- 5.4 The Customer undertakes not to use any trademarks or trade names applied by the Company to the Goods, nor do or permit anything to be done whereby the goodwill or reputation of such trademarks or trade names may be prejudiced or damaged.
- 5.5 The Customer shall not sell any Samples to any third party or treat any Samples as Goods or as replacement Goods for any purchased Goods.
- 5.6 Save as otherwise permitted to comply with any legal or regulatory rights or obligations, the Customer shall not remove, cover or alter any packaging, labelling, notices or end user instructions which are placed on or which accompany the Goods.

6 Delivery

- 6.1 Subject to conditions 4.2, 6.2 and 6.3, delivery of the Goods shall be made to the delivery address specified in the Order normally within two (2) working days after the date of the Company's acceptance of the Order unless the Company notifies the Customer otherwise.
- 6.2 The Company reserves the right to withhold delivery of any Goods if any sum due to the Company under any contract with the Customer is overdue or if, in the reasonable opinion of the Company, the financial standing of the Customer has been impaired for any other reason.
- 6.3 Time for delivery shall not be of the essence and, subject to condition 8.6, the Company shall not be liable for any loss or damage whatever due to any failure by the Company to deliver the Goods (or any of them) promptly or at all.
- 6.4 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.
- 6.5 The Customer shall take delivery of the Goods promptly whenever they are tendered for delivery (which shall include signing the relevant delivery note). If, for any reason, the Customer fails to take such delivery of the Goods or otherwise causes or requests a delay in delivery:
- 6.5.1 the Goods shall be deemed to have been delivered;
- 6.5.2 risk in the Goods shall pass to the Customer; and
- 6.5.3 the Company shall be entitled to store or arrange for the storage of the Goods until the date of actual delivery to the premises of the Customer, and shall be entitled to charge the Customer for the reasonable costs of such storage and any additional charges incurred in delivering the Goods at a later date.
- 6.6 The Customer shall ensure that adequate and safe facilities and procedures exist at the Customer's premises for the delivery and storage of the Goods.
- 6.7 The Customer shall immediately notify the Company's Customer Support Centre if the Goods are not received within seven (7) days of receipt of the order confirmation.

Acceptance of the Goods

- 6.8 Subject to condition 6.9, the Customer shall be deemed to have accepted the Goods seven (7) days after the date of delivery to the Customer. After acceptance, the Customer shall not be entitled to reject Goods which are not in accordance with the terms of the Contract and the Company shall have no liability whatever to the Customer in respect of the Goods.
- 6.9 The Customer must notify to the Company's Customer Support Centre any alleged defect, shortage in quantity, damage, loss or failure to comply with description within seven (7) days of receipt and hold the Goods for inspection by the Company.

Return of the Goods

- 6.10 No Order which has been accepted by the Company may be cancelled by the Customer and no Goods which have been delivered to the Customer and are in accordance with the terms of the Contract will be accepted for return without the prior written approval of the Company on terms to be determined at the absolute discretion of the Company.
- 6.11 Any requests to return Goods must be made to the Company's Customer Support Centre within twenty-eight (28) days after the date of delivery of the Goods to the Customer. Goods which have specialist storage requirements or short expiry dates will not be accepted for return.
- 6.12 If the Company agrees to accept any Goods for return, the Company will issue a "return reference number" and reserves the right to charge a handling fee to the customer. For the avoidance of doubt, all Goods must be in a resalable condition, in their original unopened packaging and the Goods shall be at the Customer's risk until return delivery is accepted by the Company.
- 6.13 Goods returned without the prior written approval of the Company may be returned to the Customer at the absolute discretion of the Company.

Recall of the Goods

- 6.14 In the event that any Goods are subject to a recall by the Company, the Customer shall provide to the Company as much information as is reasonably possible regarding the whereabouts of the Goods.

7 Title and Risk

- 7.1 The Goods shall be at the Customer's risk from the time of delivery, unless the parties have agreed in writing that the Goods are to be collected from the Company's premises, in which case the Goods shall be at the Customer's risk from when the Company notifies the Customer that the Goods are available for collection.
- 7.2 Property in the Goods shall not pass from the Company until:
7.2.1 the Customer has paid the price in full (in cleared funds); and
7.2.2 no other sums whatever are due from the Customer to the Company.
Notwithstanding the foregoing the Customer is permitted to use consumable Goods in the ordinary course of its business whilst the Goods remain the property of the Company and title in those consumable Goods shall pass to the Customer at the time of such use.
- 7.3 Until property in the Goods passes to the Customer in accordance with condition 7.2, the Customer shall:
7.3.1 hold the Goods on a fiduciary basis as bailee for the Company;
7.3.2 store the Goods separately from all other goods in its possession and mark them in such a way that they are clearly identified as the Company's property; and
7.3.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price.
- 7.4 In the event that the Customer resells any Goods to a third party, then the proceeds of sale or otherwise of the Goods, to the full extent of the price of the Goods, shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.
- 7.5 The Company shall be entitled to recover the price notwithstanding that property in any of the Goods has not passed from the Company.
- 7.6 Until such time as property in the Goods passes from the Company, if the Customer:
7.6.1 enters into liquidation or has a winding up order made against it or has a liquidator, receiver or examiner appointed in respect of its assets; or
7.6.2 fails to make payment in accordance with these conditions,
the Customer shall upon request deliver up to the Company such of the Goods as have not ceased to be in existence or resold. If the Customer fails to do so, the Company may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods.
- 7.7 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. If the Customer does so, all sums whatever owing by the Customer to the Company shall forthwith become due and payable.
- 7.8 On termination of the Contract, howsoever caused, the Company's rights contained in this condition 7 shall remain in effect.

8 Warranties and Liability

- 8.1 Subject as expressly provided in the Contract, all terms, conditions, warranties and representations (whether express, implied or statutory including without limitation warranties of merchantability, non-infringement and fitness for a particular purpose are hereby excluded to the fullest extent permitted by law.
- 8.2 The Company shall be under no liability in respect of any damage arising from fair wear and tear, fire or accident, willful damage or negligence by the Customer, its agents, employees or subcontractors, abnormal working conditions, failure to follow the Company's instructions, misuse or unauthorised installation, alteration or repair of the Goods. The Customer must pass the Company's instructions for use of the Goods onto any purchasers or potential users of the Goods.
- 8.3 The Customer shall indemnify the Company for any losses incurred by the Company in respect of any claim brought for:
8.3.1 use of the Goods by the Customer in breach of any applicable laws and regulations in respect of the Goods;
8.3.2 infringement of any patent, copyright or other third party intellectual rights relating to the Goods by the Customer; or
8.3.3 any other breach of these conditions by the Customer.
- 8.4 The Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of use, loss of production, loss of business, opportunity or revenue or loss of goodwill arising under or in connection with the Contract, or for any indirect or consequential loss of any kind arising under or in connection with the Contract.
- 8.5 Subject to condition 8.7, where any valid claim in respect of the Goods is notified to the Company in accordance with these conditions, the Company shall be entitled to repair or replace the Goods (or the part in question) or, at the Company's sole discretion, refund to the Customer the price of the Goods (or proportionate part of the price), and the Company shall have no further liability to the Customer.
- 8.6 Subject to conditions 8.4, 8.5 and 8.7, the aggregate liability of the Company arising in connection with the supply of Goods, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to an amount not exceeding 150% of the price paid by the Customer for the Goods that are the subject matter of the claim.
- 8.7 Nothing in these conditions shall exclude or limit the liability of the Company for:
8.7.1 death or personal injury caused by the Company's negligence
8.7.2 fraud or fraudulent misrepresentation; or
8.7.3 any matter in relation to which it would be unlawful for the Company to exclude or attempt to exclude its liability to the extent that such liability may not be excluded or limited by applicable law.

9 Force Majeure

- 9.1 The Company shall not be responsible for any failure to fulfil its obligations under these conditions and/or in relation to the Goods if such failure is caused by an event which is beyond its reasonable control (including acts of God, war, armed conflict, acts of terrorism, riot, strikes, industrial action (including action involving the Company's employees), fire, flood, any natural disaster, epidemic, pandemic, quarantine, governmental acts or omissions, change in laws or regulations, any defaults by the Company's suppliers or subcontractors, difficulties obtaining workmen or materials, and breakdown of machinery).
- 9.2 If such event continues for more than one (1) month, the Company may terminate the Contract without liability.

10 Assignment and Subcontracting

- 10.1 The Company may assign any or all of its rights under the Contract to any third party and may sub-contract the performance of its obligations under the Contract to any third party. The Company may novate the Contract, unamended, to any third party and the Customer shall consent to any such novation.
- 10.2 The Customer may not assign or sub-contract any right or obligation under the Contract without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

11 Export & Trade Control

- 11.1 The Customer shall not export the Goods from the United Kingdom without the prior written consent of the Company.
- 11.2 Without prejudice to condition 11.1, the Customer shall:
11.2.1 be responsible for obtaining all necessary licences and complying with all applicable legislation and regulations governing the export of the Goods from the United Kingdom and the importation of the Goods into the country of destination (including compliance with condition 11.2.2) and shall be responsible for the payment of all duties on the Goods; and
11.2.2 comply with all applicable import, customs, export controls, and trade and economic sanctions laws, rules and regulations issued by the United States, United Kingdom, European Union and/or any other applicable jurisdiction in performance of the Contract.

12 Miscellaneous

- 12.1 All communications between the parties about the Contract shall be in writing and delivered by pre-paid post, by hand or by email to the party's registered office, principal place of business email address provided for the purpose of receiving such communications or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice. In the absence of evidence of earlier receipt, any notice shall be deemed to be duly served:
12.1.1 if sent by pre-paid post, two working days after posting;
12.1.2 if delivered personally, when left at the relevant address; or
12.1.3 if sent by email, one working day after transmission.
The provisions of this condition shall not apply to the service of any proceedings or other documents in legal action, which shall be in writing and delivered by pre-paid registered post.
- 12.2 Save as required to be disclosed by law, both parties, their employees and agents shall at all times keep confidential and secret and shall not disclose to any person any information, materials or documents acquired in connection with the Contract that concerns the other party, its employees or business, unless and until such information is in or enters the public domain through no wrongful default of the receiving party or any person on its behalf. The Company acknowledges that Customers that are NHS bodies will be subject to the Freedom of Information Act 2000. Such Customers in responding to any request under the Freedom of Information Act 2000 shall treat the price and specification relating to the Goods as exempt from disclosure. On termination of the Contract, howsoever caused, the parties' obligations contained in this condition 12.2 shall remain in effect.
- 12.3 Neither party, its employees, agents or subcontractors, shall offer, promise or give, or request, agree to receive or accept any financial or other advantage as an inducement or reward for the improper performance by either party of any relevant function or activity, nor shall they offer, promise or give any financial or other advantage to any person with the intention of inducing or influencing that person for the purposes of obtaining or retaining business or an advantage in the conduct of business for such party. For the avoidance of doubt, both parties agree to comply with any relevant UK or international anti-bribery legislation (including the Bribery Act 2010 and the Foreign Corrupt Practices Act) and any other industry or organisational codes of conduct applicable to such party.
- 12.4 Each right or remedy of the Company under these conditions is without prejudice to any other right or remedy of the Company.
- 12.5 On termination of the Contract, howsoever caused, all obligations which are expressed to remain in effect shall survive termination of the Contract, together with such conditions the survival of which is implied or is necessary for the interpretation or enforcement of the Contract.
- 12.6 Subject to condition 1.1, a person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 If any provision of the Contract is held to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed to be severable and the remaining provisions of the Contract and the remainder of the provision shall continue in full force and effect.
- 12.8 No waiver or forbearance by the Company (whether express or implied) in enforcing any of its rights under these conditions shall prejudice its right to do so in the future.
- 12.9 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.