

## TERMS AND CONDITIONS OF SALE

### General Definitions

The Products (referred to as "goods") set out overleaf, or otherwise delivered or to be delivered are sold and supplied by Amgen Limited ("the Company") only on the following conditions of sale ("Condition of Sale") which supersede all previous conditions of sale express or implied of the company, person or firm buying the goods ("the Buyer").

The terms of any contract entered into by the Company for the supply of goods to a Buyer shall consist of these Conditions of Sale, the express terms of the Company's printed purchase order and/or sales invoice form (either or both being hereafter referred to as "the Sales Form") together with the terms of any other document expressly referred to in the Sales Form, and any such contract shall supersede all previous discussions, negotiations, letters and agreements in relation to the supply of the goods. The Company shall not be bound by any order for goods placed by the Buyer (whether or not such order purports to be an acceptance of any quotation or offer made by the Company) unless and until the Company issues a Sales Form in respect of such goods. Any variation, cancellation or waiver of these Conditions of Sale shall only be effective if made in writing and signed by a duly authorised representative of the Company. The Company will upon request, immediately verify whether an employee has the requisite authority. If and insofar as these Conditions of Sale are inconsistent with the Sale of Goods Act 1979 as amended or re-enacted these conditions shall prevail.

If the Buyer accepts any goods delivered by the Company or if an arrangement for the supply of such goods is in existence then the acceptance of delivery by the Buyer of such goods shall be deemed to constitute acceptance of these Conditions of Sale and of the terms of any Sales Form rendered by the Company at or before the time when such goods are delivered.

### Price

Unless otherwise stated in the Sales Form or prices quoted all prices are inclusive of carriage, insurance and freight costs but do not include VAT or any other tax, surcharge or impost imposed by any competent authority which shall be determined as at the date of despatch and shall be payable by the Buyer. All prices shall be subject to alteration without notice.

All goods are sold to wholesalers, distributors and hospitals on the understanding that they are holders of a wholesaler dealer or similar licence under the Medicines Act 1968 (as amended) or any such other licence or consent required for the wholesale supply, distribution or use of such goods and to retailers on the understanding that they are lawfully conducting a retail pharmacy business which is

registered or under the supervision of a registered pharmacist.

### Payment Conditions

Unless otherwise agreed in writing payment shall be made by the Buyer in cleared funds thirty (30) days following the date of invoice. Time for payment shall be of the essence. Without prejudice to any other right or remedy which the Company may have, the Company reserves the right to charge interest on a daily basis on any amounts not paid when due at the rate of three per cent per annum above the base rate for the time being of Barclays Bank PLC based on a 365 day year without compounding. If, the Company shall in good faith consider that the financial condition of the Buyer at any time does not justify fulfilment of supply or delivery on the agreed terms of payment, then the Company may (without prejudice to any other right or remedy available to it and without incurring any liability to the Buyer whatsoever) suspend production and/or delivery and require full or partial payment in advance or demand security for payment as a condition of continuing production and/or delivery.

Non-payment on the due date shall entitle the Company to suspend any deliveries and/or the supply of any services and/or cancel the contract without further notice and the provisions of this condition shall apply to this contract and any other contract between the Company and the Buyer. The Buyer shall not be entitled to set-off against any sums owed to the Company.

### Delivery Dates

Any date for delivery of goods as specified in the Buyer's order or otherwise quoted or agreed by the Company, will be estimated by the Company as accurately as possible but is not guaranteed and in the event of any failure to meet such date the Company's sole obligation shall be to deliver the goods in question within a reasonable period thereafter. The Company shall not be held liable or responsible for any delay or non-delivery nor for any loss, expense or damage whatsoever resulting from any such delay or non-delivery.

### Delivery

Unless otherwise agreed by the Company in writing the goods shall be regarded as delivered to the Buyer upon the first in time to occur of delivery to the address specified by the Buyer, either by the Company or by its delivery agent or by a common carrier or on delivery to the Buyer's agent.

The Company shall be entitled to determine the route and manner of delivery of the goods and in particular shall have the Buyer's authority to make such contracts with any carrier as the Company may consider reasonable.

The Company shall be entitled to make delivery by instalments and in such case each instalment shall

be regarded as constituting a separate contract to which each of these Conditions of Sale shall apply.

#### **Risk**

Risk in the goods shall pass to the Buyer upon delivery or, if earlier, when they are placed at the Buyer's disposal.

#### **Descriptions and Specification**

Unless otherwise stated in writing all descriptions, specifications, drawings and particulars of weights and dimensions contained in the Company's catalogues, brochures, price lists, data sheets, manuals or other published matter are approximate only and do not form part of this contract or give rise to any independent or collateral liability by the Company as they are intended merely to present a general indication of the goods.

Whilst the Company's staff will endeavour to provide the Buyer with information, particulars and specifications which are as accurate as possible they are not authorised to bind the Company to any matter which is not confirmed in writing. Accordingly the Buyer must obtain the written confirmation, signed by a duly authorised representative, of any matters which are considered important and should not seek to rely on any oral representations. The Buyer must make such enquiries and perform such tests as it considers appropriate to ensure the suitability and fitness of the goods for their intended purposes and applications.

#### **Quantities**

The goods will normally be subject to minimum order quantities as the Company may agree from time to time. The Buyer should also place stock orders at reasonably convenient intervals as agreed with the Company having regard to the quantities involved and such orders should be submitted in writing. The Buyer shall accept the supply of a quantity (whether more or less) within 5% of the stipulated amount. In such circumstances the invoice value of the goods shall be subject to a corresponding adjustment and the Buyer shall pay the adjusted value. Subject as aforesaid, the prices quoted are for quantities and despatch conditions stipulated and do not necessarily hold good for other quantities or for different conditions of despatch.

#### **Retention of Title**

(a) Notwithstanding delivery to the Buyer, neither legal nor beneficial title to the goods will pass to the Buyer until the Buyer has paid to the Company all sums due and payable from the Buyer (and any member of the Buyer's group of companies where the Buyer is a company) to the Company;

(b) The Buyer hereby licenses the Company, its servants and agents to enter upon any premises of the Buyer for the purpose either of satisfying itself that condition (c) below is being complied with by the Buyer and/or, if the Company has terminated the Buyer's right of resale pursuant to condition (e)

below, for the purposes of recovering any goods in respect of which title has not passed to the Buyer;

(c) Until title to the goods has passed to the Buyer, it shall possess the goods as a bailee of the Company the terms of the bailment being modified by this contract. The Buyer acting as bailee shall ensure that goods received and not paid for are clearly identifiable as belonging to the Company and stored separately from other goods;

(d) Notwithstanding that title has not passed and subject to sub-clause (e) the Buyer, as mercantile agent, may sell the goods to a third party purchaser ("Purchaser") agent but only on terms that title to the goods shall not pass to the Purchaser until the Buyer as mercantile agent has received payment in full of all moneys owing from the Purchaser. Until such payment is made the Company reserves the right to recover payment for the goods from the Purchaser in accordance with the provisions of sub-section 12(3) of the Factors Act 1889;

(e) The Buyer's right of resale may be terminated by the Company upon oral or written notice to the Buyer immediately if the Buyer defaults in payment of any sum when due and shall automatically cease if a receiver is appointed over any of the assets of the Buyer, or any person shall become entitled to levy distress in respect of any assets situated at any premises of the Buyer, or a judgment is entered against the Buyer and is not paid out within seven days, or a petition is presented for an administration order in respect of the Buyer, or a petition is presented or notice is given of a resolution to wind up the Buyer or the Buyer is or is deemed to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

(f) The Buyer shall not be entitled to pledge or grant any security in any way of any indebtedness over or in respect of any of the goods which remain the property of the Company;

(g) Notwithstanding the provisions of sub-clauses (d), (e) and (f), the Company shall, if it retakes the goods and resells them, account to the Buyer for the balance (if any) as determined pursuant to sub-clause (h);

(h) The balance in respect of which the Company shall account to the Buyer in the circumstances specified in sub-clause (g) shall be the proceeds of sale of the goods less: the expenses of resale; and the sum owing from the Buyer to the Company.

#### **Force Majeure**

The Company shall be relieved from any liability under any contract incorporating these Conditions of Sale if and to the extent that it may become delayed or unable to carry out all or any of its obligations as a result of any event or matter beyond its reasonable control for the duration and to the extent that it is so delayed or becomes unable to carry out its obligations. By way of illustration and not of limitation, the following are considered

as events beyond the reasonable control of the Company: strike, lock-out or other industrial dispute, public disorder, riot, revolution, mobilisation, hostilities, war (whether or not formally declared), epidemic, fire, earthquake, storm, flood and other acts of God, official regulations, orders, requirements or acts of any Government, Governmental or administrative authority, transportation difficulties, working difficulties, machine breakdowns, failure of supplies or other causes whether similar or not.

#### **Complaints and Returns**

When signing for goods from the carrier, the Buyer will check that the number of packages received agrees with the number on the delivery note and shall immediately record any numerical discrepancy or obvious external damage on the carrier's delivery note and by giving written notice to the carrier and to the Company. Without prejudice to section 32 of the Sale of Goods Act 1979 the Company will consider claims for damages, shortages or incorrect delivery only if notified within three days of receipt of the goods and claims for non-delivery only if notified within 10 days of the estimated arrival time upon the expiry of such time. If any claim is so notified the Company's sole responsibility will be limited to replacing or redelivering the goods in question and the Buyer will not be entitled to any other compensation whatsoever. The Company will accept no responsibility for any claims howsoever caused not notified within those periods. Goods shall not be returned without written authorisation and instructions from the Company. Returned goods will not be accepted if compliance is not made with such instructions. The Company shall be given a reasonable opportunity to examine any alleged defect. The Buyer shall not be entitled to withhold the whole or any part of any payment due for goods sold on the ground of any alleged defect or any other claim whatsoever against the Company unless written notice has been given of the same in accordance with this clause and the defect or other claim is recognised by the Company and the Company agrees to such retention in writing signed by its duly authorised representative.

#### **Batch Recall**

In the event of any batch recall the Buyer agrees to co-operate with the Company in taking all necessary steps to remove the relevant batch from the market place. In order to facilitate any possible batch recall the Buyer shall maintain suitable records such as associated batch numbers and all the quantities in respect of all sales together with appropriate details of its customers in question.

#### **Limitation of liability**

If any of the goods supplied by the Company should prove not to be fit for their intended purpose when stored and used correctly, the Company will either replace or, at its sole option, refund the

purchase price, but shall have no liability to the Buyer for any other consequential loss, damage or expense. The Company shall not in any circumstances whatsoever (whether by reason of negligence, breach of contract or otherwise) be liable for any loss, damage or expense, whether direct, indirect or consequential (including without prejudice to the generality of the foregoing loss of profits, business interruption, loss of goodwill or reputation) arising out of or in any way connected with the delivery and/or sale and/or use of the goods whether by the Buyer or by any third party. Nothing in this clause shall be taken to limit or restrict the Company's liability for personal injury or death resulting from the negligence of the Company, its employees and agents.

#### **Indemnity**

The Buyer agrees to indemnify and hold the Company harmless from and against any claims, costs, expenses and damages arising out of: the abnormal or improper use, misuse or neglect of the goods or any breach of these Conditions of Sale or default on the part of the Buyer including without limitation the storage of the goods other than in accordance with the conditions of storage and any health and safety sheets and/or product sheets and the use of the goods for indications other than those for which the goods are approved; any use or sale of any goods manufactured by the Buyer and incorporating any goods supplied by the Company to the Buyer.

#### **Storage**

If the Buyer refuses or fails to provide forwarding instructions or to take delivery of goods tendered in accordance with these Conditions of Sale, the Company shall be entitled to demand immediate payment for the goods. The Company shall be entitled to store or arrange the storage of the goods at the risk and cost of the Buyer. All stocks of the goods shall be stored by the Buyer or the Buyer's representatives in accordance with the conditions of storage and any health and safety data sheets and/or product sheets as issued or amended by the Company from time to time. The Company shall be entitled with the prior agreement of the Buyer (such agreement not to be unreasonably withheld) to inspect the Buyer's stocks of the Company's products at the Buyer's depots, sub-depots or other business premises.

#### **Intellectual Property**

For the avoidance of doubt, any sale of goods to the Buyer does not in any way entitle the Buyer to use any trademarks owned by the Company, its associates and affiliates. The Buyer shall not infringe any patent, trade mark, trade name, registered design, copyright or other intellectual property right belonging to the Company its associates and affiliates and relating to the goods or any other things supplied by the Company with or in relation to the goods. Any infringement of the

Company's intellectual property rights whether by substitution, passing off, copyright or trade mark infringement or any other improper use whatsoever will result in the Company taking appropriate action to safeguard its interests.

#### **Freedom of Information**

The Buyer acknowledges and agrees that the terms of this contract constitute a trade secret and confidential information of Amgen ("Confidential Information"). The Buyer, its employees, directors, officers and agents will treat all Confidential Information as secret, will not disclose Confidential Information to any third party without the prior written consent of Amgen, will take all reasonable steps to prevent such disclosure and will not use the Confidential Information for the benefit of any third party. This obligation of confidentiality will not apply to information which the Buyer is able to prove was already known to it or which subsequent to disclosure by Amgen comes into the public domain other than through breach of any duty of confidentiality by the Buyer. Amgen acknowledges that the Buyer is subject to the Freedom of Information Act 2000 ("FOIA") and the Buyer acknowledges that information is exempt from disclosure under the FOIA including if; (i) it has been provided to the Buyer in confidence and disclosure other than pursuant to the FOIA would constitute an actionable breach of confidence or (ii) it is a trade secret and in all the circumstances the public interest in maintaining the exemption outweighs the public interest in disclosure. In the event that the Buyer receives a request for Confidential Information of Amgen pursuant to the FOIA it shall notify Amgen in writing of such request as soon as practicable after receipt but in any event within two (2) working days of such request. Such notification shall include the name and address given by the applicant and a description of the information requested. The Buyer agrees that the Confidential Information of

Amgen concerning commercial terms (including any discount or support offered) for the supply of goods is exempt from disclosure under the FOIA unless such Confidential Information was already known to the Buyer or is in the public domain. The Buyer acknowledges and agrees that there may be other Confidential Information of Amgen which is exempt from disclosure under the FOIA. To the extent that a request for Confidential Information of Amgen concerns such Confidential Information, the Buyer shall consult Amgen and shall take into account all reasonable representations of Amgen prior to considering application of the exemptions from disclosure contained in section 41 of the FOIA (information provided in confidence) and section 43 of the FOIA (commercial interests). The Buyer shall notify Amgen of any decision to disclose Confidential Information of Amgen pursuant to a request under the FOIA prior to any disclosure being made. Such notification shall be made in writing as soon as practicable but in any event at least five (5) working days prior to the date of disclosure. The above terms shall continue to apply for fifteen (15) years after the expiry or termination of this Agreement.

#### **Law**

These Conditions of Sale and the contract in which they are incorporated shall be governed by and construed in accordance with English law and the Buyer hereby submits to the exclusive jurisdiction of the English courts. If any of these Conditions of Sale or the contract in which they are incorporated are held by a court of competent jurisdiction to be unenforceable or unlawful the remaining terms and conditions shall continue in full force and effect.

#### **Miscellaneous**

The Company sells the goods as principal only to the intent and with the effect that no other person or persons shall have any rights or obligations, or be entitled or liable to sue or be sued, under this contract.