

AESICA - STANDARD CONDITIONS OF PURCHASE

- 1 Interpretation**
- 1.1 In these Conditions:
"Buyer" means any or all of Aesica Pharmaceuticals Limited; Aesica Queenborough Limited; Aesica Pharmaceuticals GmbH; Aesica Pharmaceuticals S.r.l.; Aesica Formulation Development Limited.
"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;
"Contract" means any contract between the Buyer and the Seller for the sale and purchase of the Goods and/or the support of the Services formed in accordance with clause 2.2;
"Delivery Address" means the address for delivery of the Goods or performance of the Services as stated in the Order;
"Goods" means any Goods which the Seller supplies to the Buyer (including any of them or any part of them) under a Contract;
"Order" means any purchase order of the Buyer for the Goods and/or Services incorporating these Conditions;
"Seller" means the person(s) or company from whom the Buyer orders the Goods and/or Services; "Services" means any services which the Buyer receives from the Seller (including any part of them) under a Contract; and
"Specification" includes any plans, drawings, data, technical specifications, design and development materials or other information relating to the Goods and/or Services.
- 2 Basis of Purchase**
- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or the Services and the Contract will be upon these Conditions to the exclusion of all other terms and conditions, including any terms or conditions which the Seller purports to apply under any acknowledgement or confirmation of order, quotation, specification, delivery note, invoice or similar document, whether or not such document is referred to in the Contract and whether or not the Buyer has objected to such documents.
2.2 The Contract is formed when the Order for the Goods and/or Services is accepted by the Seller verbally, in writing or by delivery of the Goods and/or performance of the Services.
2.3 The Order will lapse unless unconditionally accepted by the Seller in writing within 7 days of the date of Order.
2.4 The Seller may not cancel the Contract The Buyer is entitled to cancel the Contract in whole or in part by giving written notice to the Seller at any time prior to delivery of the Goods and/or performance of the Services in which event the Buyer's sole liability will be to pay to the Seller fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
2.5 No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 3 Specification**
- 3.1 The quantity, quality and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification or agreed in writing by the Buyer. The Seller acknowledges that precise conformity of the Goods and/or Services with the Contract is of the essence of the Contract and the Buyer will be entitled to reject the Goods or terminate the Contract under clause 9.1.1 if the Goods and/or Services are not in conformance with the Contract, however slight the breach may be. Any breach of this clause 3.1 shall be deemed to be a material breach, which is not capable of remedy under clause 9.1.1.
3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller to the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification, or any other confidential information relating to the Buyer's business, products, suppliers or customers which the Seller may receive or learn from the Buyer at any time except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
3.3 The Seller shall maintain and observe the Buyer's Ethical Code of Conduct, and the Environment, Health and Safety Expectations for Suppliers and complete the appropriate EHS Questionnaire. The EHS Expectations and the Questionnaires can be found at <http://www.aesica-pharma.co.uk/standardconditionsforpurchase/>
3.4 The Seller shall maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of the Buyer, its customs, relevant British Standards and statutory and regulatory bodies and comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or the performance of the Services.
3.5 The Seller shall maintain detailed quality control and manufacturing records for the period of at least 12 years from the date of supply of the Goods and/or performance of the Services.
3.6 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.
3.7 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 7 days of the inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
3.8 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.
3.9 The Seller shall ensure that its representatives comply with all safety and security regulations in force at the Buyer's premises.
- 4 Price of the Goods and/or the Services**
- 4.1 The price of the Goods and/or the Services shall be stated in the Order and, unless otherwise so stated, shall be:
4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a proper VAT invoice); and
4.1.2 inclusive of all charges including, but not limited to, packaging, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts, levies or taxes other than value added tax
4.2 No increase in the price may be made (whether on account of increased materials, labour or transport cost, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.
4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.
- 5 Terms of Payment**
- 5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or performance of the Services, as the case may be, and each invoice shall be a proper VAT invoice and quote the number of the Order.
5.2 Unless otherwise stated in the Order the Buyer shall pay the full price of the Goods and/or Services at 90 days from the end of the month following receipt by the Buyer of an invoice issued in accordance with clause 5.1 or, if later, after acceptance of the Goods and/or Services in question by the Buyer.
5.3 If the Buyer fails to make any payment due to the Seller under this agreement by the due date for payment calculated in accordance with clause 5.2, then the Seller shall be entitled to claim simple interest on the overdue amount at the rate of 3% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount. This clause shall not apply to payments that the Buyer disputes in good faith.
5.4 The Buyer shall be entitled but not obliged at any time or times without notice to the Seller to set off against any liability of the Buyer to the Seller any sums owed to the Buyer by the Seller.
- 6 Delivery**
- 6.1 The Goods shall be delivered carriage paid to and/or the Services shall be performed at the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours and if no such period is stated in the Order, then within 28 days of the date of the Contract.
6.2 The Seller shall inform the Buyer immediately upon realising that an agreed date for Delivery cannot be met for any reason, specifying in writing the reasons for and anticipated duration of the delay.
6.3 Deliveries made and/or services performed at the wrong address will be corrected at the Seller's expense.
6.4 Deliveries made earlier than expected shall, at the Buyer's sole discretion, either be returned to the Seller at the Seller's expense or stored by the Buyer at the cost and risk of the Seller until the agreed date of delivery and the Buyer shall not be obliged to make any payment before such agreed delivery date.
6.5 The time of delivery of the Goods and/or performance of the Services is of the essence of the Contract.
6.6 A packaging note quoting the number of the Order must accompany each delivery or consignment of the Goods, must be prominently displayed and show, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
6.7 The Seller may not deliver the Goods by separate instalments and/or perform the Services in stages unless agreed in writing by the Buyer. If the Buyer does agree, the Contract will be construed as a separate Contract in respect of each instalment or stage, and without prejudice to any other right or remedy, the Buyer will have the right but not the obligation, to:
6.7.1 treat all Contracts for the total Order as repudiated if the Seller fails to deliver or perform any instalment or stage; and
6.7.2 reject any or all of the instalments or stages for the total Order if the Buyer is entitled to reject anyone instalment or stage.
6.8 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 7 Risk and Property**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.
- 7.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.
- 8 Insurance**
- 8.1 The Seller shall take out and maintain adequate insurance to cover the risks and liabilities under the Contract. The insurances shall be with a reputable insurance company, and the Seller shall, on the request of the Buyer, provide evidence of the insurance policy or policies and of payment of the premiums.
- 9 Warranty**
- 9.1 The Seller warrants, represents and undertakes to the Buyer that the Goods and/or Services:
9.1.1 will be of satisfactory quality within the meaning of EU laws and fit for any purpose held out by the Seller or made known to the Seller either in writing or orally at the time that the Order is placed;
9.1.2 will be free from defects in design, material and workmanship;
9.1.3 will correspond in every respect with any relevant Specification, sample or description; and
9.1.4 will comply with all statutory requirements, regulations and voluntary codes of conduct relating to the Goods and/or the Services and their sale, supply and performance.
9.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel and to a high standard of skill, care and diligence, in accordance with the Contract and such standards of quality generally observed in the industry for similar services.
9.3 Without prejudice to any other rights or remedies of the Buyer (whether express or implied), if the Seller breaches any terms of the Contract (including, without limitation, a failure or delay in delivery) or the Buyer terminates the Contract in accordance with clause 10.1 then the Company may (but will not be obliged), whether or not the Goods and/or Services have been accepted:
9.3.1 cancel any or all remaining instalments or stages if the Contract has not already been terminated;
9.3.2 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Seller attempts to make;
9.3.3 recover from the Seller any additional expenditure reasonably incurred by the Buyer in obtaining the Goods and/or Services in substitution from another supplier;
9.3.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's breach of the Contract or failure to deliver the Goods and/or perform the Services on the due date or at all; and/or
9.3.5 for a period of 60 months from the date of delivery, in respect of Goods which do not conform with the provisions of clause 9.1, oblige the Seller, at the Buyer's option, forthwith to replace or repair such Goods free of charge and any repaired or replaced Goods will be guaranteed on the terms of this clause for the unexpired portion of the 60 month period.
9.4 The Seller shall indemnify, keep indemnified and hold harmless the Buyer from and against all costs (including the costs of enforcement), expenses, liabilities, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs, expenses (on a full indemnity basis) and judgments which the Buyer incurs or suffers as a result of or in connection with:
9.4.1 a direct or indirect breach or negligent performance by the Seller or failure or delay in performance of the terms of the Contract;
9.4.2 breach of any warranty given by the Seller in relation to the Goods and/or the Services;
9.4.3 any claim that the Goods infringe, or their importation, use or resale, infringes, the patent copyright, design right, trade mark or other intellectual property rights or any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
9.4.4 any product liability claims in respect of the Goods;
9.4.5 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
9.4.6 any act or omission of any of the Seller or its employees, agents or sub-contractors in connection with the performance of the Services.
9.5 Neither the Seller nor the Buyer shall be liable to the other, or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods and/or the Services, if the delay or failure was beyond that party's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-
9.5.1 act of God, explosion, flood, tempest, fire or accident;
9.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
9.5.3 acts, restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
9.5.4 import or export regulations or embargoes;
9.5.5 in the case of the Buyer only, strikes, lock-outs or other industrial actions or trade disputes.
- 10 Termination**
- 10.1 The Buyer shall be entitled to terminate the Contract immediately without liability to the Seller by giving written notice to the Seller at any time if the Seller:
10.1.1 is in material breach of any of the terms of the Contract and, where the breach is capable of remedy, the Seller fails to remedy such breach within 14 days of service of a written notice from the Buyer, specifying the breach and requiring it to be remedied. For the avoidance of doubt, failure to deliver the Goods and/or perform any Services on the due date in accordance with clause 6.1 is a material breach of the terms of the Contract which is not capable of remedy;
10.1.2 becomes insolvent or is subject to proceedings under any law relating to bankruptcy, insolvency, or relief of debtors;
10.1.3 has any receiver, trustee or custodian appointed to take possession of all or any substantial portion of its assets;
10.1.4 ceases to trade or appears in the reasonable opinion of the Buyer likely or threatening to cease to trade;
10.1.5 has a change in its management and/or control whereby there is a sale of all or substantially all of the assets of the Seller; or a merger, consolidation or acquisition of the Seller by or into another entity; or any change in the ownership of more than fifty (50%) of the voting capital stock of the Seller in one or more related transactions;
10.1.6 suffers from a cause beyond its reasonable control (as set out in clause 9.5), the effect of which subsists for a period of at least 90 days; or
10.1.7 the equivalent of any of the above occurs to the Seller in another jurisdiction to which the Seller is subject or the Buyer reasonably anticipates that one of the above set of circumstances is about to occur.
- 11 Anti-Bribery**
- 11.1 Each party represents, warrants and covenants that neither it nor any affiliate of it nor any officer, employee or agent of it (or any of its affiliates) has, nor shall it, offer, promise or give, or receive, any financial or other advantage in violation of the Bribery Act 2010 (UK), as amended from time to time, respectively, or any comparable laws in any country from which or to which Services are provided by or for it under the Contract (collectively, "Anti-Bribery Laws") and each party and its affiliates shall each maintain procedures designed to prevent bribery falling within the Bribery Act 2010. Each party further represents, warrants and covenants that no person employed by it, and no person acting as agent of it in connection with its obligations under the Contract is an official of the Government of any country (or of any agency of such government), and that no part of any monies or consideration paid to it under the Contract shall occur for the benefit of any such official. For the purposes of enabling the parties to monitor each other's compliance with Anti-Bribery Laws, each party shall make available for audit by the other party or its designee, upon that party's reasonable request at any time during the term of the Contract, books, records and other documentation relevant to the its business activities conducted pursuant to the Contract.
- 12 General**
- 12.1 Each right or remedy of the Buyer under any Contract is without prejudice to any other right or remedy of the Buyer under this or any other Contract.
12.2 The parties to the Contract do not intend that any of its terms will be enforceable by any person not a party to it.
12.3 The parties agree that the terms of the United Nations Convention on Contracts for the International Sale of Goods (CISG) 1980 are hereby excluded.
12.4 Any notice in connection with the Contract will be in writing addressed to the other party at its registered office, or principal place of business and will be delivered by hand, or first class or special delivery post. The notice will be deemed to have been duly served, if delivered by hand, when left at the proper address for service, or if by pre-paid, first-class post or special delivery post, 48 hours after being posted.
12.5 The Contract is personal to the Seller and the Seller shall not assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract without the Buyer's prior written consent.
12.6 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
12.7 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or part then that provision (or the relevant part thereof) will, to the extent required, be severed from that Contract and will be ineffective, without as far as is possible, modifying any other provision or part of the Contract and the validity of the other provisions of the Contract and any remainder of the provision in question shall not be affected thereby.
- 13 Applicable Law**
- 13.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Contract or of any term of the Contract will be governed by English law. The English Courts will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract. The parties agree to submit to that jurisdiction.